IN THE MATTER OF AN ARBITRATION

BETWEEN:

UNIVERSITY OF BRITISH COLUMBIA

("University")

AND:

FACULTY ASSOCIATION OF THE UNIVERSITY
OF BRITISH COLUMBIA

("Association")

(INTEREST ARBITRATION 2015)

REPLY SUBMISSION OF THE FACULTY ASSOCIATION

Allan E. Black, Q.C.

BLACK GROPPER
1640 - 401 West Georgia Street
Vancouver, B.C. V6B 5A1
(604) 632-3380

TABLE OF CONTENTS

LIST OF TABLES

LIST OF FIGURES

REPLY SUBMISSION ON BEHALF OF THE FACULTY ASSOCIATION
(INTEREST ARBITRATION 2015)

This Submission constitutes the Faculty Association's response to the University's Submission of August 31, 2015 and its Ability to Pay Reply Submission of September 18, 2015 in respect of the following issues:

A. Legal Issues (*res judicata*, the use of expert witnesses, adjudicative vs. replicative models)
B. Ability to Pay ("the ratio")
C. Article 11.02e i-iv ("Considerations After Ability to Pay is Found")
D. The University's Approach to Bargaining
E. The University's Responses to Association Proposals
F. The University's Non-monetary Proposals
G. Arbitration Principles for Non-Monetary Proposals

1. Introduction

1.01 This interest arbitration is governed by Article 11 of the Framework Agreement, which directs the Arbitration Board to give **first** consideration to the University's ability to pay the cost of an award from its general purpose operating funds. To do that, in accordance with Article 11, the Arbitration Board must "take account of the University's need to preserve a reasonable balance between the salary of members and other expenditures" and determine whether the University has the ability to pay the cost of an award. If an ability to pay is determined, then the Arbitration Board shall base the award on the criteria listed in Article 11.02(e)(i-iv).

1.02 The Association, in its Submission of August 31, 2015, carefully and methodically examined the issue of the University's ability to pay and clearly and transparently explained why the University has the ability to pay the cost of an award.

1.03 The Association then specifically addressed all of the criteria listed in Article 11.02(e)(i-iv) and presented compelling and detailed evidentiary support for each of the criteria.

1.04 In its Submission of August 31, 2015, the Association concluded that with respect to its monetary proposals

(a) the University has the ability to pay the cost of the Association's monetary proposals; and

(b) the Association's proposal for an appropriate general wage increase and its other monetary proposals, meet the tests required under Article 11.02(e)(i)-(iv) (pp. 14-15) to warrant such increases.

1.05 With respect to the Association's non-monetary proposals, the Association has provided an evidentiary basis to conclude that none of its proposals fall outside the norm of agreements that comparator universities have already achieved, and in some cases, the Association is only seeking items that other employee groups have already achieved. In addition it has evidenced a demonstrated need for its proposals.

1.06 Below we address the major points of the University's August 31, 2015 Submission and its September 18, 2015 Ability to Pay Reply Submission.

2. Legal Issues (adjudicative vs. replicative models)

2.01 Article 11 of the *Framework Agreement* (page 13) addresses the criteria that the Arbitration Board is to consider in adjudicating this agreement. However, the University asks the Arbitration Board to include the following items as part of its adjudication (paragraph references are to the University's August 31, 2015 Submission):

a. the PSEC mandate (Paragraphs 8, 47, 48, 60 and 253)
b. the findings of Arbitrators McPhillips and Lanyon in several arbitrations conducted pursuant to the Fire and Police Services Collective Bargaining Act (Paragraphs 78, 83, 102, and 129)
c. settlements in the Province (Paragraphs 45-47).

2.02 These additional items should be given little if any weight in this interest arbitration. As such, although we will speak to them briefly, we will not belabor the point on most of these considerations.

2.03 Contrary to the University's argument, the PSEC mandate must not be given any weight in deciding whether the University has the ability to pay the cost of an award. The PSEC mandate does not arise from either legislation or other formal mechanism. Further, as noted in the Association's August 31, 2015 Submission, the Collective Agreement makes absolutely no reference to PSEC, and does not include the PSEC mandate as a criterion in determining the University's ability to pay. As we noted in the Association's August 31, 2015 Submission, the Collective Agreement makes absolutely no reference to PSEC (or a PSEC mandate) as one of the criteria in determining the University's ability to pay, and therefore, it should not be given any weight in making a decision about the ability to pay the cost of an award.

2.04 Moreover, at Paragraph 3.20 of our August 31 Submission we cite Arbitrator Taylor's Award wherein he rules that "The PSEC mandate does not have legislative force, and therefore does not override the parties' Agreement legislatively."

2.05 The awards of Arbitrator McPhillips and Arbitrator Lanyon, cited by the University at paragraphs 80-82, 83 and 129 of its August 31, 2015 Submission, are not relevant in the present proceeding. Those awards were the result of interest arbitrations conducted under a significantly different framework than applies in the current interest arbitration. As a result, many of the findings and conclusions of those arbitrators have no bearing on the matter at hand.

2.06 Unlike the current interest arbitration, the awards of Arbitrator McPhillips and Arbitrator Lanyon cited by the University were conducted pursuant to the *Fire and Police Services Collective Bargaining Act* [RSBC 1996] Chapter 142 (**Tab 1** of the Association's Book of Evidence).

2.07 The factors to be considered by an arbitrator in an interest arbitration under that *Act* are significantly different than those at issue in the present case.

2.08 The Association and the University do not fall under the *Fire and Police Services Collective Bargaining Act*. Instead the Parties have expressly negotiated and agreed to the criteria to be considered in adjudicating an award.

2.09 The University argues at paragraphs 47 and 48 of its August 31, 2015 Submission that the PSEC mandate is relevant to the present interest arbitration, as it informs what is occurring at comparator universities in British Columbia.

2.10 The Association rejects that contention. The PSEC mandate has absolutely no statutory effect. The Arbitration Board is thus free from the constraint of the PSEC mandate. To quote Donald R. Munroe, QC, interest arbitrators in the public sector are not "minions of government," despite the fact "there never has been free collective bargaining according to the true definition of that phase" in the public sector (**Tab 16**, Book of Authorities). Instead, the interest Arbitration Board in this case is guided by an adjudicative model, as the Collective Agreement provides objective criteria on which to base its decision.

> a. The fact is that in some of our more sensitive work settings, both in the private and the public sectors, **there never has been free collective bargaining according to the true definition of that phrase**: which is "collective bargaining, including the right to strike or lock out, with a minimum of third-party intervention; and in particular, a minimum of senior governmental intervention." Hospitals, public schools, our ferry system in B.C., the national railways, the west coast grain terminals and the West Coast longshore industry are all examples of the point just made. In those settings, successive governments, both federal and provincial, have made it clear, by their serial and substantial interventions, that free collective bargaining, as defined above, will not be allowed. **So if that's the case, what's to replicate?**
>
> (page 3, emphasis added)
>
> b. I do not thereby suggest that arbitrators become "minions of government".
>
> (page 20)
>
> c. I do think that the future of interest arbitration in essential services or industries will depend on an acceptance of appropriate criteria for decision.
>
> (page 20)

2.11 At Paragraph 47, the University states:

> Because the University of Victoria and SFU are comparators, it is relevant to understand the economic context in which these universities (including UBC) operate. The University of Victoria settlement, and UBC's proposal in this arbitration, reflects the PSEC mandate both for duration of the agreement and for general salary increases. As can be seen from the document at Tab B settlements in other post-secondary institutions are consistent with the PSEC mandate.

2.12 The University of Victoria settled **above** the mandate. In addition to the mandate, there are salary increases of an additional of 1.44% to base salary for 2014 and 2015, and there are increases to CPI and Merit for 2016/17, 2017/18, and 2018/19 that amount to an additional increase of .71% over those three years.

2.13 UVic's Agreement demonstrates that it is possible to break the PSEC mandate in bargaining. UVic may have been more fortunate in this regard, as it achieved a settlement under Section 55 of the Labour Code. Both UVic and SFU are negotiating their first Collective Agreements in this round of bargaining, so it is difficult to compare that situation to the one at UBC, where the Parties have had a collective agreement in place for many years.

2.14 At Paragraph 48, the University states:

> We appreciate that the PSEC mandate is not one of the criteria set out in Article 11.02 (e) but it is relevant in that it informs what is occurring at the comparator universities in British Columbia.

2.15 The PSEC mandate has absolutely no statutory or legislative effect on the Arbitration Board. Further, the Association asserts, the Arbitration Board is free from the constraint of the PSEC Mandate, for, as to quote Mr. Munroe, "they are not the minions of government." Instead, as Mr. Munroe suggests, the Arbitration Board in this interest arbitration is guided by an adjudicative model because the Collective Agreement provides the objective criteria on which to base its decision.

2.16 The University contends at paragraphs 69 and 70 of its August 31, 2015 Submission that the Arbitration Board should not award any of the Association's non-monetary proposals, as it says there is no compelling need for the changes, the issues are complex, there is insufficient information before the Arbitration Board to properly analyze the issues, and the parties themselves must decide the appropriate trade-offs.

2.17 The Association strongly disagrees with the University's assertion. The issues before the Arbitration Board are **not** that complicated. They have been spelled out clearly and succinctly in the Association's August 31, 2015 Submission. In the Association's August 31, 2015 Submission, it showed the demonstrated need for the proposals it seeks. Further, if the Arbitration Board needs more time or requires more information, it can compel both parties to appear or to provide the necessary information and clarification to the issues as is required to render a decision.

2.18 These matters have been appropriately placed before the Arbitration Board and that they should be adjudicated one way or the other. To do otherwise is to abdicate the responsibility of the Board to decide the issues before it. Should the Board decide not to award a proposal advanced by one of the Parties, The Association expects that the reasons would be provided.

3. Legal Issues: Res Judicata

Does *res judicata* apply to prevent the re-litigation of factual issues from the 2013 arbitration?

3.1 In a letter to the Faculty Association dated May 29, 2015 (**Tab 2**, Book of Evidence), counsel for the University stated:

> 4) It is the University's position that the analysis and data underlying App. B – Updated, Schedule 1 to the 2013 Interest Arbitration Award ("Appendix B") was accepted by Arbitrator Taylor as the most accurate ratio analysis which determined the "reasonable balance" under the Framework Agreement. **That analysis is binding on the parties in the current arbitration**. Therefore, to the extent that the Faculty Association's information requests pertain to further analyzing or challenging Appendix B (such as item 4 of your request), the requested information is irrelevant. The relevant financial information up to FY 2012 is contained in Appendix B

> and/or the supporting information provided during the 2013 Interest Arbitration proceedings.
>
> (emphasis added)

3.2 In its Reply Submission on its ability to pay dated September 18, 2015, the University, at paragraph 29, attempts to argue that the Faculty Association now seeks to reopen the findings in the Taylor award to show that the ratios in previous years would be higher if further adjustments were made. The University argues that the doctrine of *res judicata* applies to prevent the re-litigation of factual issues.

3.3 In essence, the University objects to the Faculty Association adjusting the ratios according to new information respecting the **actual amount** paid from the old GPOF fund, which was **not known at the time of the previous award**. The University claims that the Faculty Association's calculations are reopening the factual findings of the previous award, giving rise to the doctrine of *res judicata*.

3.4 The Faculty Association submits that the purpose of Ms. Joy's adjustment is to achieve significantly more accurate ratios using the new information available. The parties did not have access to final numbers during the 2013 arbitration, and accordingly, inaccurate projections were relied on. Currently, the Faculty Association has the ability to calculate ratios reflective of the actual versus projected numbers, and this is well within the collective bargaining rights of the Faculty Association.

3.5 The Faculty Association is not attempting to re-litigate the factual issues that were before Arbitrator Taylor in the previous award. Instead, the Faculty Association seeks to support its argument that the University has the ability to pay using the accurate facts as they are now known to exist today.

3.6 While this might be questioning the findings of the previous award, the Faculty Association is legitimately able to do so as the doctrine of *res judicata* does not apply in disputes related to contract formation: ***Health Employers Assn. of British Columbia v. International Union of Operating Engineers (Severance Pay Grievance)***, [2010] BCCAAA No. 150 (Larson) (Book of Authorities, **Tab 17**). Adjusting previous calculations with new information that reflect the actual amount paid out of the old GPOF fund allows for a more truthful and accurate picture of the University's current ability to pay.

3.7 Arbitrator Larson in **Health Employers Assn., supra**, held that while *res judicata* has been applied to the settlement of grievances in labour arbitration, it does not apply to disputes relating to contract formation, such as interest arbitration, as there are no rights to adjudicate without a contract in place.

> However, the doctrine has never been extended to the negotiation of collective agreements, presumably because it involves issues of contract formation. The doctrine of *res judicata* has been applied to the settlement of grievances because it involves purported rights that are already established by the collective agreement. A grievance is statutorily defined as being a dispute involving the interpretation, application, operation or violation of a collective agreement, one that is already in full force and effect. It does not apply to disputes relating to contract formation, nor could it logically apply because until the contract is in place, there are no

rights to adjudicate. In an interest arbitration, as in this case, it may be properly argued that an issue had been raised and dealt with in a particular manner in previous negotiations as a persuasive factor in how it should be dealt with in a subsequent one, but it cannot operate to preclude negotiations about the same issue in subsequent negotiations. That approach would have the effect of entrenching the terms and conditions of every collective agreement and make them unchangeable, contrary to the legislative mandate to that effect in Part 4 of the Labour Relations Code. (paragraph 23)

4. The Use of Expert Witnesses

4.1 What is an expert witness?

4.1.1 The University has proposed to call two employees (Stuart Mackenzie and Andrew Glynn) from its Finance Department as "expert" witnesses to give opinion evidence respecting the University's ability to pay for a salary increase and other proposed amendments to the Collective Agreement.

4.1.2 The Faculty Association does not object to the employees being called as non-expert witnesses to give evidence regarding the facts.

4.1.3 However, the Faculty Association strongly objects to any of their opinions respecting the University's ability to pay, or any other matter, being entered into evidence.

4.1.4 The Faculty Association's primary argument is that the opinion evidence is not admissible, as it does not meet the test established by the Supreme Court of Canada in **White Burgess Langille Inman v. Abbott and Haliburton Co**., 2015 SCC 23 ("**White Burgess**"). (Book of Authorities, **Tab 18**)

4.1.5 In the alternative, even if the opinion evidence is admissible, it should be given little to no weight.

4.2 The University's Purported "Expert" Opinion Evidence Is Not Admissible

4.2.1 The opinions of Mr. Mackenzie and Mr. Glynn are not admissible in the present case as they do not meet the test for admissibility established by the Supreme Court of Canada in **White Burgess, supra** as they do not meet the test for the role of an expert witness.

4.2.2 The role of an expert witness is to provide the decision-maker with technical or "scientific information which is likely to be outside the [decision-maker's] experience and knowledge": **R. v. Mohan**, [1994] 2 SCR 9, [1994] SCJ No. 36 (QL), at para. 21, (Book of Authorities, **Tab 19**) quoting **R. v. Abbey**, [1982] 2 SCR 24 at 42 ("**Abbey #1**"). (Book of Authorities, **Tab 20**)

4.2.3 That role is different from that of non-expert witnesses.

(a) Non-expert witnesses testify as to "what they saw, heard, felt or did, and the trier of fact, using that evidentiary raw material, determines the facts."

(b) Expert witnesses, on the other hand, "take information accumulated from their own work and experience, combine it with evidence offered by other witnesses, and present an opinion as to the factual inference that should be drawn from that material. The trier of fact must then decide whether to accept or reject the expert's opinion as to the appropriate factual inference."

R.* v. *Abbey, 2009 ONCA 624, [2009] OJ No. 3534 (QL), at para. 71, leave to appeal refused, [2010] 2 SCR v. ("***Abbey #2***") (Book of Authorities, **Tab 21**)

4.2.4 Expert witnesses have a duty to the court or other decision-maker to give "fair, objective and non-partisan opinion evidence": **White Burgess, supra**, at paras. 2, 10, 30, 46.

4.2.5 That duty is based on the three related concepts of impartiality, independence and absence of bias:

(a) An expert's opinion will be impartial when it "reflects an objective assessment of the questions at hand".

(b) An independent opinion will be the "product of the expert's independent judgment, uninfluenced by who has retained him or her, or the outcome of the litigation".

(c) An unbiased opinion is one that "does not unfairly favour one party's position over another".

White Burgess*, *supra, at para. 32

4.3 ***The Test for Admissibility of Expert Opinion Evidence***

(a) Overview

4.3.1 The test for admissibility of "expert" opinion evidence was recently clarified by the Supreme Court of Canada in **White Burgess**, **supra**.

4.3.2 The Supreme Court of Canada has established a two-step process for deciding whether purportedly "expert" opinion evidence is admissible:

(a) At step one, the proponent for the evidence must establish that the evidence is:

i. relevant;
ii. necessary to assist the trier of fact;
iii. proffered by a properly qualified expert; and
iv. not barred from admission by other exclusionary rules.

(b) If the evidence meets <u>all</u> of the requirements of step one, a decision-maker must, at step two of the test, assess whether the evidence should nonetheless be excluded on the ground that the potential helpfulness of the evidence is outweighed by the potential risks of admitting the evidence.

White Burgess*, *supra, at paras. 23-24

4.3.3 In the present case, the third step one factor, as well as the cost-benefit analysis at step two of the test, are relevant to the determination of whether the University's purported "expert" evidence is admissible. As a result, we focus our submissions on those factors below.

(d) Step 1: Is the "Expert" Properly Qualified?

(i) The Test

4.3.4 To qualify as an expert, a proposed witness must be shown to have acquired special or peculiar knowledge through study or experience in respect of the matters on which he or she is proposing to testify: ***R.* v. *Mohan*, *supra***, at para. 27.

4.3.5 Assuming that a purported "expert" has the requisite knowledge, a further requirement to meet the "properly qualified expert" criterion is that he or she must be willing and able to meet the duty of impartiality and independence: ***White Burgess*, *supra***, at para. 53.

4.3.6 The duty of an expert witness to the court or other decision-maker overrides his or her obligation to the party that hired him or her: ***White Burgess*, *supra***, at para. 46.

4.3.7 In assessing whether a proposed expert is able and willing to carry out his or her duty, the decision-maker must have regard to both the particular circumstances of the proposed expert, and the substance of the proposed evidence: ***White Burgess*, *supra***, at para. 49.

4.3.8 The nature and extent of a proposed expert's interest or connection with the litigation or a party thereto is relevant to this examination, not the mere fact of the interest or connection: ***White Burgess*, *supra***, at para. 49.

4.3.9 **However, a proposed expert who assumes the role of "an advocate for a party is clearly unwilling and/or unable to carry out the primary duty to the court": *White Burgess*, *supra***, at para. 49. As the Ontario Court of Appeal has stated in that regard:

> … It is not helpful to a court to have an expert simply parrot the position of the retaining client. Courts require more. The critical distinction is that **the expert opinion should always be the result of the expert's independent analysis and conclusion. While the opinion may support the client's position, it should not be influenced as to form or content by the exigencies of the litigation or by pressure from the client.** An expert's report or evidence should not be a platform from which to argue the client's case. As the trial judge in this case pointed out, "the fundamental principle in cases involving qualifications of experts is that the expert, although retained by the clients, assists the court."
>
> ***Carmen Alfano Family Trust (Trustee of)* v. *Piersanti***, 2012 ONCA 297, [2012] OJ No. 2042 (QL), at para. 108, leave to appeal refused, [2012] SCCA No. 309; emphasis added (Book of Authorities, **Tab 22**)

4.3.10 Other factors that have been held to bring a proposed expert witness' independence and impartiality into question include the facts that the witness:

(a) indicated on his CV that he was a medical expert for the law firm that retained him in the case;

(b) had cherry picked facts that supported a diagnosis that advanced the case of the client that retained the expert, and failed to include in the report facts that hurt the case.

Frazer* v. *Haukioja, [2008] OJ No. 3277 (QL), at paras. 142, 143, and 154 (Ont SC of Justice) (Book of Authorities, **Tab 23**)

4.3.11 The party opposing the admission of the purported expert evidence has the burden to raise a realistic concern that the expert is unable and/or unwilling to comply with the duty of independence and impartiality, such that evidence should be excluded: ***White Burgess***, ***supra***, at para. 48.

4.3.12 If such a realistic concern is established, the party proposing to call the evidence must prove on the balance of probabilities that the purported expert is in fact independent and impartial, failing which, the evidence, or those parts of it "tainted by a lack of independence or impartiality," will be excluded: ***White Burgess***, ***supra***, at para. 48.

(ii) Application to the Current Case

4.3.13 In the current case, the University's proposed expert witnesses do not meet the "properly qualified expert" criterion on two grounds:

4.3.14 The Faculty Association's objection to Mr. Mackenzie and Mr. Glynn being granted "expert" witness status does not lay in the fact that they are simply employees of the University.

4.3.15 Andrew Glynn is the Director, Management Reporting and Budgeting, at UBC. His office is responsible for the following functions:

a) "Producing the University's annual Budget which is approved by the Board of Governors.
b) Reporting on the progress against the financial plan throughout the year and monitor the corrective action that is being undertaken.
c) Ensuring that the General Purpose Operating (GPO) funding allocations are done according to the governance standards.
d) **Assisting with the forward-looking vision** and financial health of the University **through the use of projections** and multi-year financial models.
e) Providing an objective review of change initiatives and advice to both the Executive, who approve the initiatives, and the staff preparing the submissions."
Source: http://finance.ubc.ca/budget-office

(emphasis added)

4.3.16 It would be difficult to argue that Mr. Glynn is arms' length in preparing the ratio analysis for the University.

4.3.17 Stuart Mackenzie is the Director of Finance, Office of the Comptroller. Some of the responsibilities of the Office of the Comptroller include

> The Office of the Comptroller oversees a range of non-academic services which supports the University's mission through the following functions:
>
> a) Providing financial expertise and **high-level guidance on financial issues and management**
> b) Preparing and managing the annual and longer term budgets
> c) Completing all external financial and accountability reporting on a quarterly and annual basis
> d) Preparing and reporting on the University's performance targets
> e) **Planning and working with government on** physical resources and **financial matters**
>
> Source: http://www.calendar.ubc.ca/vancouver/index.cfm?tree=6,232,592,0
> (emphasis added)

4.3.18 If the duty of the Comptroller's office is **planning and working with government on financial matters,** it would be difficult to conceive how representatives from that Office could be neutral in preparing the ratio analysis for this arbitration. After all, the government has a special interest in making sure that the PSEC mandate is carried out.

4.3.19 The University is now purporting that these same employees are "expert" witnesses capable of independently and impartially assessing the validity of the University's position as to its ability to pay a salary increase.

4.3.20 The proposed experts will be put in the impossible position of attempting to impartially and independently assess their own work, including the assumptions and projections used in the ratio analysis. That is too great an expectation of them; one that they simply cannot meet.

4.3.21 The University is attempting to call the purported "experts," not to provide an independent and impartial opinion to the Arbitration Board, but to defend their prior work and to advocate on the University's behalf in respect of the ability to pay issue.

4.3.22 This case is one of the rare cases in which a proposed expert's opinion evidence is inadmissible due to a failure to meet the duty of impartiality and independence.

4.3.23 The proposed expert witnesses are very clearly unable to fulfill that duty as a result of their participation in the events underlying the present interest arbitration.

4.3.24 For those reasons alone, the proposed "experts" are not in fact "experts," and their opinions should therefore be excluded from evidence.

(e) Step 2: The Decision-Maker's Gatekeeping Function

(i) The Test

4.3.25 Trial judges and other decision-makers play an important gatekeeping role in respect of the admissibility of expert evidence. The Supreme Court of Canada stated the following in that regard:

> … The admissibility of the expert evidence should be scrutinized at the time it is proffered, and not allowed too easy an entry on the basis that all of the frailties could go at the end of the day to weight rather than admissibility (para. 28).
>
> ***White Burgess***, ***supra***, at para. 45, quoting ***R.*** v. ***J-LJ***, 2000 SCC 51, [2000] 2 SCR 600, at para. 28

4.3.26 At step two of the admissibility test, a trial judge or other decision-maker must decide whether expert evidence that meets the threshold test in step one "is sufficiently beneficial to the trial process to warrant its admission despite the potential harm to the trial process that may flow from the admission of the expert evidence": ***White Burgess***, ***supra***, at para. 24, quoting ***Abbey #2***, ***supra***, at para. 76.

4.3.27 In addition to being considered in respect of the step one "properly qualified expert factor," concerns about an expert's independence and impartiality are also taken into account in weighing the evidence at the "gatekeeping" stage of the admissibility test: ***White Burgess***, ***supra***, at paras. 10, 34 and 54.

4.3.28 Consideration of the potential probative value of the proposed evidence involves an assessment of the reliability of the evidence, in which the following factors are to be weighed:

> (a) the subject matter of the evidence;
> (b) the methodology used by the proposed expert in arriving at the opinion;
> (c) the proposed expert's expertise; and
> **(d) the extent to which the proposed expert has been shown to be impartial and objective.**
>
> ***Abbey #2***, ***supra***, at para. 87

(ii) Application to the Current Case

4.3.29 Even if the opinions of the proposed "experts" meet the threshold test at step one, a result to which we strongly object, the opinions should nevertheless be excluded from evidence at the second or "gatekeeping" stage of the analysis.

4.3.30 Self-serving evidence defending the previous work of the proposed "experts" and the positions of the University, such as is sought to be admitted in this case, is not sufficiently beneficial to warrant admission into evidence.

4.3.31 The reliability of the opinions of the proposed "experts" on the ability to pay issue would certainly be in question, given that they they are directly responsible for developing the University's budget and forecast plans.

4.3.32 As an interest arbitrator has no need of such partial and self-serving opinions in deciding the case, the opinions are unnecessary, and register zero or close to zero on the "benefit" side of the scale.

4.3.33 For those reasons, even if the proposed "expert" opinions pass the initial threshold factors, a finding we strongly oppose, the opinions should nonetheless be excluded from evidence on the basis that their potential harm or prejudicial effect outweighs any probative value they might have.

(f) Response to the Cases Cited by the University on the Issue of Admissibility

4.3.34 We do not dispute the University's contention at paragraph 3 of its Reply Submission dated September 18, 2015, that "internal experts" sometimes qualify as expert witnesses. However, the cases cited by the University are distinguishable from the present case.

4.3.35 Unlike the current case in which the proposed "experts" are involved in developing the same projections used for the University ability to pay analysis, and then conducting that analysis themselves, the decision in ***R.* v. *INCO Ltd.*** (2006), 80 OR (3d) 594 (Ont Sup Ct Justice) did not involve a situation in which the "internal expert" was involved in the events leading to the legal action. The case involved prosecution of the defendant for breach of the Ontario *Water Resources Act*. The "internal expert" was a scientist with the Investigations & Enforcement Branch of the Ministry of Environment. In that role, he provided information and direction to investigators in the Branch who investigated potential breaches of the *Water Resources Act*.

4.3.36 ***Pfizer Canada Inc.* v. *Apotex Inc.***, 2007 FC 971, [2007] FCJ No. 1271 (QL), involved a challenge to the validity of an existing patent. We note that neither party raised any issue as to the admissibility of the expert witness opinions. Nor is there any indication that the court considered an employee of one of the parties to be an "expert witness." The reference to "Pfizer's in-house experts" in paragraph 68 of the decision is not a reference to expert witnesses appearing before the court. It is a reference to the researchers employed by Pfizer, in relation to the research that they were conducting.

4.3.37 The only witness referenced in the "Expert Evidence" section of the decision who was employed by a party was Peter Ellis, Pfizer's Director of Exploratory Biology. He was one of the three named inventors on the patent. There is no indication that the court considered him to be an expert witness. The only reference to his evidence in the "Expert Evidence" section of the decision is a statement that his evidence about the process of making the discovery supported the opinion of a witness who was in fact treated as an expert witness (para. 77). Mr. Ellis does not appear to have given any expert opinion evidence (see paras. 39-42 where his evidence is described).

4.4 In the Alternative, If the University's Purported "Expert" Evidence Is Admissible, Little or No Weight Should be Given to It

A) <u>The Legal Principles</u>

4.4.1 Concerns about an expert's independence or impartiality that are insufficient to result in the exclusion of his or her opinion evidence are to be considered in relation to the weight to be given to the evidence once admitted: ***White Burgess***, ***supra***, at paras. 33-34, 40 and 45.

B) <u>Application to the Current Case</u>

4.4.2 Even if the purported "expert" opinions are admitted into evidence, the Faculty Association's alternative argument is that they should be given little to no weight in light of their self-serving nature due to the lack of impartiality and independence, and the advocacy role of the purported "experts."

4.4.3 The independent and impartial opinion of the Faculty Association's expert, Eleanor Joy of PricewaterhouseCoopers LLP, contained in her August 26, 2015 Expert Report and her October 5, 2015 Reply Report, should certainly be given much more weight than the self-serving opinions of Mr. Mackenzie and Mr. Glynn.

5. Ability to Pay ("the ratio")

5.1 The Determination of Reasonable Balance by Previous Arbitration Boards

5.1.1 The University in many places in its Submission of August 31, 2015 and its Ability to Pay Reply Submission of September 18, 2015,, attempts to focus the Arbitration Board on "the ratio." Because the ability to pay analysis does produce ratios, which must be considered by the Board, it is important to understand both the meaning of the reference to the concept of the "ratio" in the Collective Agreement, and as seen by previous arbitration Awards.

5.1.2 In the previous Award, Arbitrator Taylor held that:

> If an award would preserve a "reasonable balance" between faculty salary and other expenditures in the University's general purpose operating funds, then absent compelling reasons why that would result in an unsound or unjust assessment of the University's actual ability to pay, that is determinative. Like the prior arbitration boards, I have found no sufficient cause for departure in this case.

5.1.3 The idea of 'a reasonable balance' does not include freezing some past balance; if the Parties had intended that, whether the prior year's ratio or the ratio from the last freely negotiated Collective Agreement, then the Parties could have stated that simply and directly in the Collective Agreement. Rather, the phrase "a reasonable balance" opens up the very space of negotiation, in an adjudicative sense, as it provides outer limits within which the award must fall.

5.1.4 The University focusses its Submissions regarding the applicable ratio on the 1989 Getz award. In that award the panel stated that:

> We concluded that … the 1987-1988 ratio, having been the product of what we described as "free collective bargaining," was "the most reliable index of reasonable in the circumstances," and hence the applicable ratio.

5.1.5 However, sometime between the 1989 and 1994 arbitration, the language of the Collective Agreement changed from "reasonable ratio" to "reasonable balance." Thus both the 1994 and the 1997 awards recognized that arbitrators need to consider more than just the previous year in making the ability to pay determination. The 1997 Arbitration Board stated in that regard:

> [I]f one is put to determine whether a reasonable balance has been preserved **it must involve some examination of the historical past**, particularly agreements that were freely negotiated, and that **it is not sufficient to merely look at the previous year**. … [T]he introduction of the word balance must be seen, in that context, to accord **a certain degree of expansiveness or range** to the decision of the arbitration board that was **not possible under the reasonable ratio test** [used in the 1989 Award]. (1997 Award, p. 7) (Book of Authorities, **Tab 4**)
>
> (emphasis added)

5.1.6 In the 1994 Award, the Arbitration Board calculated, (on the basis of the information provided by the Parties), the relationship between bargaining unit salaries and other operating fund costs for the fiscal years 1988-89 to 1992-93 inclusive. The Board then examined the comparative percentages over that five-year period to determine whether the Association's salary proposal preserved a reasonable balance for the 1993-94 academic year. It concluded that it did.

5.1.7 In the 1997 Award, the arbitrators considered the period between 1989 and 1996, and again concluded that the Association's salary proposal preserved a reasonable balance.

5.1.8 The Association asks the Arbitration Board to consider the historical evidence with "a certain degree of expansiveness or range" in evaluating the question of the University's ability to pay.

5.2 The Sensitivity of the "Ratio" to Assumptions

5.2.1 Before we address the University's ability to pay an award beyond the salary offer it has proposed, it's important to understand the sensitivity of the ratio to various assumptions that are made.

5.2.2 The ratio is constructed based on assumptions about both the numerator and the denominator. The Parties differ in their assumptions about how to construct the numerator and denominator.

5.2.3 The numerator is composed of real (having already been paid) or projected (moving into the future) bargaining unit salaries, i.e., salaries paid to members in a given FY.

5.2.4 To estimate what bargaining unit salaries will be in FY2 (where FY1 is the last year in which numerator and denominator are known and do not have to be projected or estimated), the following facts and assumptions are relevant to the calculation:

a) The number of faculty members in the bargaining unit at FY1
b) The number of new hires starting in FY2
c) The number of terminations (i.e., resignations and retirements) that occurred during FY1
d) The salaries paid to members in the bargaining unit in FY1
e) The average salaries of new hires starting in FY2
f) The average salaries of terminated employees who ended employment in FY1.

5.2.5 New hires and terminations, considered together, yield the net new hires in the bargaining unit for each FY. The net new hires, and the projected average salary for them, become part of the projected bargaining unit salary to be paid by the University.

5.2.6 There are additional assumptions that make up the final estimate for a projected FY bargaining unit salaries, such as turnover savings and PTR payments, but for purposes of simplicity, we can look at just one example to illustrate how easy it is for the University to project that bargaining unit salaries will be higher than they actually turn out to be.

5.2.7 In paragraph 28 the University's Ability to Pay Reply Submission the University disputes that there was a significant difference between the University's forecast for FY14 in the previous arbitration and the actual results. The Association disagrees. For example, ***Table 1*** indicates how far off the net new hires projections were for FY14, when projected during the 2013 arbitration:

Table 1. Projected and Actual Net New Hires, FY14

	Projected (Tab 18, University Submission 2013)	**UBC Stated Actual (Tab 5.6 of University Submission, July 13, 2015)**
Net New Growth	41	25
Average Salary of New Hires	$108,000	$89,176
(Average Salary) * (Net New Growth)	$4,428,000	$2,229,400
Difference Between Projected and "Actual"		$2,198,600[1]

[1] $4,428,000-$2,229,400

5.2.8 As can be seen from Table 1 in the 2013 arbitration the University overestimated the cost of net new hires by a factor of two. Assuming that the information presented in **Tab 5.6** is accurate, actual costs in FY14 were approximately half of what the University projected.

5.2.9 By overestimating the numerator (and there are more ways to do that than just wrongly projecting the salaries for new hires), the University is telling the Arbitration Board that it will spend more on salaries than it will actually do so, and this can lead to higher ratios, ratios that can appear to be outside of the historic range.

5.3 Errors in Faculty Growth in Tab 5.6

5.3.1 In paragraph 22 of the University's Ability to Pay Reply Submission of September 18, 2015, the University disputes Ms. Joy's argument that the projected net increase in BU members is too high. The Association disagrees. Tab 5.6 in the University's Ability to Pay July 13, 2015 Submission contains, in the first row, data entitled "BU Members." No source was given for those data, nor any clear definition. From context it was clear that by "BU Members" the University meant "BU members excluding Sessionals." Even with that understanding the numbers presented by the University in Tab 5.6 for hires and terminations (and thus net new hires) were, on their face, implausible.

Consequently the Association requested a detailed list of every new hire and termination between July 1, 2010 and June 30, 2015, and received that data on August 25, 2015.

5.3.2 By comparing the list of hires with data provided to the Association by the University monthly on membership of the bargaining unit, the Association was able to determine that the data was highly accurate, with the following exceptions.

a) The list included all employees of the University who received Board of Governors appointments in classifications within the Association's bargaining unit, including excluded positions: Deans, Associate Deans, Deputy Vice Chancellors, and Provosts.

b) When members were converted from one non-sessional classification to another both the original appointment **and** the new appointment were included as new hires, but the end of the original appointment was not recorded as a termination. In other words the terminations data only included members who terminated their employment with the University, while the hire data included new appointments of already employed members. While it is understandable that the "terminations" file would only include those who terminated their employment with the University, failing to include those who terminate an appointment in one classification to take one in a different classification while recording both appointments as new hires resulted in a significant amount of double counting of new hires. These are essentially interpretation errors: the data are accurate but measure slightly different things, leading to misinterpretation.

c) The University declined to provide the requested data for Sessional Lecturers. Since it was clear from context that Tab 5.6 was intended to exclude Sessional Lecturers this posed no problem for projecting the growth in the number of members in the non-Sessional classifications. It does, however, pose a problem in projecting the increase in the total salary bill resulting from that growth. A very significant number of "new" Lecturers were, in fact, individuals converted from Sessional appointments who were performing the same work as Lecturers that they had been performing as Sessionals. Their conversion from Sessional to Lecturer does increase the number of non-Sessional bargaining unit members, but by reducing the number of Sessional Lecturers by the same number. Those conversions do not increase the salary bill by the full amount of the salaries they earn in the Lecturer classification, but only by the increase in salary (if any) generated by their conversion from Sessional to Lecturer.

5.3.3 By relying on this highly accurate case-level data the Association was able to determine that there were significant errors in the "BU Members" row in Tab 5.6. First, we took out the 11 excluded employees other than Associate Deans in the data. Since we have learned that UBC intentionally included Associate Deans in Tab 5.6 we left them in for the purposes of comparison, even though we disagree that they should have been included at all. With that small adjustment we were able to arrive at a "corrected" list of new hires and terminations for the Fiscal years FY12, FY13, FY14, and FY15 (that was the extent the data set allowed).

5.3.4 ***Table 1*** was an effort to determine the accuracy of Tab 5.6 given the underlying case level data, without attempting to correct the errors in the underlying case level data. That analysis demonstrated that the faculty growth rates and turnover savings used by the University to make future projections erred significantly, and in a way that overestimated future ratios. For example, extending the analysis of ***Table 1*** to include the actual net new growth based on the case level data, but without correcting interpretation errors produces ***Table 2***.

Table 2. Projected and Actual Net New Hires, Adjusted, FY14

	Projected (Tab 18, University Submission 2013)	**UBC Stated Actual (Tab 5.6 of University Submission, July 13, 2015)**	**Actual Based on Case Level Data Provided to FA by UBC, uncorrected for interpretation errors**
Net New Growth	41	25	5
Average Salary of New Hires	$108,000	$89,176	$95,778
(Total Salary) * (Net New Growth)	$4,428,000	$2,229,400	$478,890
Difference Between Projected and "Actual"		$2,198,600[1]	$3,949,110[2]

[1] $4,428,000-$2,229,400
[2] $4,428,000-($478,890)

5.3.5 In other words, the University presented in the 2013 arbitration that it would pay $4,428,000 more in salaries, just for the cost of new hires, in FY14, than it did in FY13. In fact, using case level data presented by the University to the Faculty Association, the actual salary going to new hires in FY14 was 478,890, representing a difference of $3,949,110.

5.4 Correcting Interpretation Errors in Faculty Growth in Tab 5.6

5.4.1 Interpretation errors occur in the University's data set because members hired in one classification and then reclassified into another classification are recorded as two new hires, but not recorded as having terminated the first appointment, because the termination data records termination from the University, not from an appointment. This resulta in double counting. The second "hire" is not actually a new hire and should not be counted as such. At **Tab 3** in the Book of Evidence, the Association has provided a table of the double counts, with initials, department, faculty, appointment dates, and salary, to highlight this issue. Subtracting these double countings produces an accurate measure of actual hires, in ***Table 3***.

Table 3. New Hires and Terminations, Non-Sessional, Corrected For Double-Counting Errors

	2012	2013	2014	2015
New Hires	164	189	124	147
Terminations	89	123	131	154
Faculty Growth	75	66	-7	-7
Average Salaries				
New Hires	87,185	92,793	96,068	93,139
Terminations	111,687	104,769	111,967	127,383
Difference	-24,502	-11,796	-15,899	-34,244

5.4.2 Once the interpretation errors are accounted for the actual difference between Projected and Actual can be calculated as per ***Table 4***.

Table 4. Projected and Actual Net New Hires, FY14, fully corrected data

	Projected (Tab 18, University Submission 2013)	UBC Stated Actual (Tab 5.6 of University Submission, July 13, 2015)	Actual Based on Case Level Data Provided to FA by UBC, corrected for interpretation errors
Net New Growth	41	25	-7
Average Salary of New Hires	$108,000	$89,176	$93,139
(Total Salary) * Net New (Growth)	$4,428,000	$2,229,400	-$651,973
Difference Between Projected and "Actual"		$2,198,600[1]	$5,079,973[2]

[1] $4,428,000-$2,229,400
[2] $4,428,000-(-$651,973)

5.4.3 The University, in its Ability to Pay Submission of July 13, 2015 estimates that it will hire 53 "normal growth" new hires and 10 "strategic hires" on July 1, 2015 and thus has allocated ¾ of the estimated cost of these hires to FY16 for the purposes of estimating the "ratio." The Association submits that the University has overestimated the costs of bargaining unit salaries for FY16, for four reasons.

5.4.4 First, as demonstrated above in ***Table 4*** the number of net new hires reported in Tab 5.6 is significantly higher than the number of new hires that actually occurred, based on actual case level data provided by UBC.

5.4.5 Second, actual data on net new hires as of July 1, 2015 provided by UBC indicates that 7, rather than 63, net new hires had occurred by that date, contrary to the University's assumptions.

5.4.6 Third, the University is including non-bargaining unit employees (Associate Deans) in the total salary data.

5.4.7 Fourth, so called strategic hires have always been a part of past growth, and should not be added to any projection based on past growth.

5.4.8 ***Table 4*** shows significantly fewer net hires for both FY14 and FY15 than was reported by the University in Tab 5.6 of the University's Ability to Pay July 13, 2015 Submission. The Association did not *estimate* net new hires, instead, it *calculated* the net new hires, using data supplied to the Association by the University through Mr. Roper on August 25, 2015.

5.4.9 The University's data show that it significantly overestimated growth rate for both FY13 and FY14, causing the numerator to be higher than it should have been for the previous arbitration. Inflated numerators make it easier for the University to claim it only has the ability to pay whatever offer it proposes.

5.4.10 We invite the Board to question the University's projections for net hires in FY16, based on the reality of what happened in 2015 and 2014, to find out why FY16 would be so much different in outcome, such that the projection of 63 in total (including 10 strategic hires) for all of FY16 will be achieved.

5.4.11 The University estimated that net new growth in non-sessional positions would be 63 faculty members, starting on July 1, 2015. The Association asked for an actual count of net new positions actually hired in FY16 up to July 15, 2015. Since the University was assuming 63 net new hires as of July 1, 2015 all should have been in place by July 15, 2015. The University responded (**Tab 5**, Book of Evidence) that, by July 15, 2015, only 7 net new positions had been filled.

5.4.12 The Association calls the Board's attention to the response given on page 3 of a letter from Roper Greyell dated July 31, 2015, responding to a question posed by the Association on July 20, 2015 regarding net new hires for FY16 to date.

5.4.13 The University commented on these data as follows (**Tab 4,** Book of Evidence,):

> [20] There was a net increase of seven positions between April 1 and July 15, 2015. As this represents net growth from new hires less terminations, it is not possible to associate it with **seven specific positions** and the related salary cost. In addition, **the first three months of a fiscal period is (sic) not representative of an historical hiring pattern**. (emphasis added)

5.4.14 As well, the Association calls the Board's attention to the table at the end at that letter (there were many other attachments, but we've simply extracted the relevant one). ***Table 5*** reproduces the data at **Tab 5** in the Book of Evidence.

Table 5. Schedule of New Hires/Terminations by Rank, April 1- July 15, 2015

New Hires (April 1- July 15, 2015)		
	Count	**Total salary**
Assoc Professor	6	798,479
Asst Professor	39	3,879,505
General Librarian	4	298,051
Instructor	7	511,496
Lecturer	24	1,605,287
Professor	10	1,821,222
Grand Total	**90**	**8,914,040**
Terminations (April 1- July 15, 2015)		
	Count	**Total salary**
Assoc Professor	18	2,166,529
Asst Professor	10	966,310
General Librarian	4	348,890
Instructor	5	309,766
Lecturer	14	688,572
Professor	29	5,001,885
Senior Instructor	3	343,081
Grand Total	**83**	**9,825,031**

Source: UBC response to UBCFA data request, July 20, 2015

5.4.15 The Association accepts that hires and terminations can occur throughout the fiscal year, with certain historic regularities, and that the first three months are not representative of the entire year's pattern. For example, most new hires start on July 1 and most terminations occur on June 30. If that pattern was universal, all net new hires would be in position on July 1 and ¾ of their salaries would occur in the Fiscal Year. This is precisely what UBC assumed when it estimated that 63 net new positions would be in place on July 1, 2015. The evidence presented by UBC in response to the Faculty Association's request demonstrated that only 7 net new positions were in place by July 15, 2015. This raises two questions. First, based on 7 net new positions by July 15, what is the likely total number of net new positions that will be made by the end of the fiscal year? Second, given that any net new positions occurring after July 1, 2015 fall less than ¾ in the fiscal year, what percentage of the annualized cost of the net new positions should be properly charged to the Fiscal Year for the University's ratio analysis?

5.4.16 In answering this question the Association asks the Board to consider the historical pattern, using data from April 1, 2014 - March 31, 2015, using the case level data provided by UBC, correcting for double counting of conversions, as shown in ***Table 6***.

Table 6. Hires, Terminations, and Net Hew Hires, FY12 - FY15

	2012		2013		2014		2015	
	Hires	**Terminations**	**Hires**	**Terminations**	**Hires**	**Terminations**	**Hires**	**Terminations**
April 1 - July 15	68	44	108	63	55	56	79	68
July 16-March 31	96	45	81	60	69	75	68	86
Total	164	89	189	123	124	131	147	154
Percent April 1 - July 15	41.5%	49.4%	57.1%	51.2%	44.4%	42.7%	53.7%	44.2%
Percent July 16-March 31	58.5%	50.6%	42.9%	48.8%	55.6%	57.3%	46.3%	55.8%

5.4.17 ***Table 6*** shows that for the previous 4 years the distribution of total hires and terminations between the period from April 1 to July 15 and the period July 16 to March 31 has been approximately 50% before and 50% after. In no year was the percentage of total terminations during the April 1 to July 15 period less than 43% of the annual total nor more than 51%. In no year was the percentage of total new hires during the April 1 to July 15 period less than 42% of the annual total nor more than 57%.

5.4.18 In FY 2016 UBC hired 90 new faculty members on or before July 15 and terminated 83 on or before July 15 (Table 5). Based on a fairly stable historical pattern we know that UBC can be expected to hire and terminate approximately 95 more faculty during the rest of the year. In other words, if FY16 is an average year we would not expect any net new growth after July 16, 2015.

5.4.19 Though net hires is just one component of projecting bargaining unit salaries into the future (or more importantly, constructing the numerator of the ratio), the Association believes net new hires is a measure that can help the Arbitration Board understand that the numbers the University presents to the Board are not fact. The Association asks the Board to weigh the evidence presented in ***Table 1*** through ***Table 6*** to evaluate the University's accuracy in projecting bargaining unit salaries, considering how it has projected net new hires, and evaluate how accurate the University's projected "ability to pay" ratios might be, accordingly. We specifically suggest that FY14 and FY15 are more likely to be the pattern moving forward, with a predictable amount of retirements causing more natural turnover at the University.

5.4.20 The University argues that, in addition to the number of net new hires that they project on the basis of past growth history, they intend to make 10 "strategic hires" with salaries of $200,000 in FY16.

5.4.21 As the Association has already demonstrated the University's growth projections are based on overinflated historic growth data, and a failure to recognize the fact that UBCO received extra government funding every year between 2006 and 2011, funding that is now complete.

5.4.22 The Association also wishes to point out that the actual growth that occurred during that time did include "strategic" hires. Essentially any hire at the full professor rank is

a strategic hire and the University routinely hires between 6 and 10 full professors every year, including 10 in FY16, as of July 15.

5.4.23 The University claims that the 10 full professors thus far hired are not the 10 "strategic hires" they wish to add to whatever the appropriate "normal hire" projection turns out to be (somewhere between 7 and 20, based on the evidence).

5.4.24 Another way that the University seeks to distort the ratio is by insisting that Associate Deans' salaries must be kept in with bargaining unit members' salaries for comparative purposes. We submit that the appropriate comparison is "bargaining unit members." The language is derived from the Collective Agreement: "the Arbitration Board shall take account of the University's need to preserve a reasonable balance between the salary of **members of the bargaining unit** and other expenditures."

5.4.25 There was a change made in the bargaining unit composition in the 2010-2012 Collective Agreement to specifically exclude those persons fulfilling the role of "Associate Dean." The University proposed to take the Associate Deans out of the bargaining unit." Their proposal is at **Tab 6** in the Book of Evidence.

5.4.26 Despite the fact that the University made this proposal, which the Association accepted, the University refuses to acknowledge that it cannot include non-bargaining unit members in the ratio analysis:

> Associate Deans' salaries have always been in the numerator and, indeed, were in the numerator for FY13 and FY14 for the ratios confirmed in the Previous Award, even though Associate Deans were listed on Appendix A to the Framework Agreement. **There was no argument by the Association for their removal in that proceeding.** Second, their salaries must be included going forward (or removed from prior years) otherwise a ratio comparison would be rendered meaningless. [Paragraph 22C, University's Reply Submission, Ability to Pay, September 18, 2015]

5.4.27 The University did not advise the Association and the Arbitrator in the previous arbitration about the inclusion of the Associate Deans. The Association requested salaries of **bargaining unit members**. We actually thought that this is what we had been given. In the texts of the written Submissions by the University and those of the University's expert witness, there was no discussion of Associate Deans having been included in "bargaining unit members'" salaries. If such argument in the text of the Submissions had existed, the Association most certainly would have objected. Thus, at the previous arbitration the Association could not have made an argument to that point.

5.4.28 We now see that the inclusion of the Associate Deans was buried in fine print in a table in the University's 2013 Submission, but this is not a legitimate form of advising the Association of what the University did. Nonetheless, there is no logic of continuing to include as "salaries to bargaining unit members" the salaries of Associate Deans, once they have been removed from the bargaining unit, and there is no logic for removing salaries of Associate Deans from bargaining unit salaries for the years that this job classification was in the bargaining unit. The ability to pay analysis is on an actual cost basis. If members are not, in a given year, actually earning income in the bargaining unit,

their salaries earned in some other employee group (much higher salaries at that), cannot be included in total bargaining unit salaries.

5.5 ***Errors in Calculating the Denominator***

5.5.1 To this point the Association has focused on ways that the numerator of the ratio can be distorted. The denominator of the ratio can also be constructed so as to be projected to be smaller than it might actually be, when one looks back after the fact.

5.5.2 In calculating the denominator for future years, the University argues that the acceptable procedure is to use revenue projections, instead of expenditures (which is the term used in the Collective Agreement, because the University is limited to what it can spend by its revenues, because it cannot run a deficit).

5.5.3 The Association understands that under the University Act, the University may not run a deficit. However, the University is not at risk of running a deficit in the near future, given the huge surpluses it runs. So the University uses the University Act as a screen to put doubt into the Arbitration Board's mind about whether it can accept any numbers other than the ones the University puts in front of it.

5.5.4 The University and Ms. Joy are at odds about how the projection for revenues should be accomplished. She notes this disparity in paragraph 17 of her Reply Report.

> In paragraph 22 (e) (i), the University comments that "*if the comparison of actual expenditure and revenue growth was made back to FY06 (and not only to FY10) and was made against the University's "high" revenue (expenditure) assumption, the difference disappears*." We disagree with this comment as it relates to FY16. Given the Association is proposing a two-year agreement, only FY16 future revenue is relevant. The FY16 revenue is identical in each of the three scenarios presented by the University. The University calculated the compound annual growth rate ("CAGR") in Operating Fund expenses between FY06 and FY15 to be 3.9%. This compares to a projected increase of 3.6% between FY15 and FY16. Had the University grown the FY15 expenses by 3.9%, the FY16 expenses would have been $4.5 million higher. This would have lowered the ratio for BU salaries to expenses for FY16 by 10 bps. (For simplicity of presentation, footnotes for this paragraph were deleted, but they do appear in her Reply Report on page 3.)

5.5.5 Ms. Joy's Expert Report set out the exact nature of her disagreement with the way the University projected its revenue:

> The University has **understated the Denominator** for FY16 by assuming an effective 3.5% increase in FY16 adjusted expenses over FY15, when the adjusted expenses increased between 3.7% and 7.7% for FY10 to FY15 and FY15 saw an increase of 4% over FY14.

5.5.6 In Schedule 1 of Ms. Joy's Expert Report (August 26, 2015), she provides a table of Annual Growth Rates as well as some Compound Annual Growth rates. Examining the ratios back to 2008, the University has chosen a growth rate that is one of the lowest in the range, rather than something like the average.

5.5.7 In the previous arbitration, Arbitrator Taylor simply accepted the University's numbers at face value. This allows the University to choose whatever annual growth rate it wants for projecting adjusted expenses. Even though the University used an Expert Witness in the previous arbitration, the witness, Mr. McEwen, did not question the University's forecast for the denominator. At paragraph 8.2c in his Expert Report, he states:

> For the year ending 31 March 2014, the forecast Unrestricted Operating Fund revenue **was Management's forecast and supporting source documents were not provided to us**. The forecast revenues indicate that each of the components of revenue will be unchanged compared to the year ending 31 March 2013, except for Domestic tuition (which is forecast to grow by 2%) and international student tuition (which is forecast to grow by 12%).

5.5.8 The reason that Ms. Joy makes an issue of the University's projected revenues, is that the lower the projection, the smaller the denominator, which results in an inflated ratio, particularly if the numerator is overstated.

5.5.9 The Association agrees with the principle that the University should not go into a deficit, but we also note that there are no consequences to the University for supplying faulty or extremely conservative data to the Arbitration Board so that it can prove that it has no ability to pay an award greater than what it has proposed.

5.6 ***The Benefit of Hindsight***

5.6.1 The Association submits to the Board that it must weigh what it means for the ratio analysis if the University projects optimistically for the numerator and pessimistically for the denominator: if nothing else, those two conditions will lead to ratios that fall outside the historic range during an arbitration process, but will likely not fall that way once real, rather than projected data are available.

5.6.2 The University chastised Ms. Joy for actually investigating what happened in hindsight. In paragraph 29 of its Reply Submission on the Ability to Pay, September 18, 2015, the University objected to the changes Ms. Joy made to the GPOF BU salaries used in the 2013 Arbitration. Ms. Joy had to make those changes in order to make the ratios interpretable.

5.6.3 Leading up to the 2013 Arbitration, the Association requested and received salaries paid to BU members. The information provided by the University was accepted by the Association, and Ms. Joy, as correct, as there was no way to independently verify the information provided by the University. In preparing for the current arbitration, Ms. Joy had opportunity to revisit the salary data to make sure it was accurate. What she discovered was that the salary figures provided by the University in the 2013 arbitration were, in hindsight, incorrect as they excluded retroactive payments and there were differences in amounts for the lump sum and gender equity payments, when compared to the information obtained during this current arbitration process. On Schedule 6.1 to the PwC Expert Report, the historical BU salaries are simply restated with the updated information received for purposes of preparing the ratio analysis for the current arbitration.

5.6.4 In paragraph 41 (a), of the University's Ability to Pay Reply Submission of September 18, 2015, the University refers to Ms. Joys Expert Report and states:

> Updated BU salaries for FY06 to FY12: Again, the University says the proposal to restate or modify the Previous Award is improper. Findings of fact were the foundation for the salary award that was made to the Association. It was open to the Association to make any suggestions to modify the analysis during the 2013 arbitration. It is not proper to now modify the analysis to seek different factual conclusions to support the Association's position in this arbitration.

5.6.5 We strongly disagree that it was "open to the Association to make any suggestions to modify the analysis during the 2013 arbitration." The University provided factually incorrect information during the 2013 Arbitration on which the Association and the arbitrator relied. This correct information did not come to light until the University provided the requested information for the current arbitration. How might the Association have objected during the arbitration to mistakes that it was not aware of and did not come to light until sometime later?

5.6.6 We make this assertion by summarizing the changes the University made to its ratio analysis following its July 13 Submission Ability to Pay Submission.

a) Tab 5.1 (Operating Fund Ratios)

- On July 31, 2015, FY13 BU salaries were increased by $1.5 million to include gender equity retro payment – this was a result of a question posed by Ms. Joy.
- On August 19, 2015, as a result of questions posed by Ms. Joy, projected international tuition was increased by $8.6 million in FY16. On that same date, BU salaries were increased by $1.1 million and $1.6 million in FY11 and FY12, respectively, also as a result of questions posed by Ms. Joy.
- On September 19, 2015, the University, in its Reply Submission, reduced the grant cut by $0.6 million to reflect the actual amount, which was set out in the Joy Report. The University also introduced a FY15 $14.4 million change in accounting, not previously disclosed, which reduced adjusted expenses for FY15 onwards.

b) Tab 8.1 (GPOF Ratios)

- On July 31, 2015, as a result of questions posed by Ms. Joy:
  - FY13 BU salaries were increased by $1.5 million to include gender equity retro payment; and
  - Estimated international tuition was increased by $3.1 million in FY14 and $6.7 million in FY15, which had an effect on each subsequent year, because of how the GPOF adjusted expenses were estimated after FY13.
- On August 19, 2015, as a result of questions posed by Ms. Joy, projected international tuition was increased by $8.6 million in FY16.
- On September 19, 2015, the University, in its Reply Submission, made a number of adjustments, all of which had an effect on each of the subsequent years:
  - Added $3.5 million of revenue from Vantage in FY15;
  - Reduced the grant cut by $0.6 million to reflect the actual amount in FY16;
  - Increased invested in capital assets by $4.9 million in FY13;

- Removed the accrual of the incremental cost of a proposed GWI of 5% of $11.4 million, which was included in the adjusted expenses for FY13;
- Added the incremental cost of 2013 Award of $1.0 million in FY13; and
- Increased funded GWI by $0.3 million in FY16.

5.6.7 That our Expert Witness had to repeatedly question the information that the University provided (almost all changes were due to queries from her) speaks clearly to the problem of allowing University employees directly involved in its financial operation to provide the University's ratio analysis. In the previous arbitration, the University contracted the services of Paul McEwen, at the time from Ernst and Young, to be its expert witness.

5.6.8 ***Table 7*** provides all of the ratios that were calculated by both Parties for FY15 and FY16 during preparation for this arbitration using the current Operating Fund.

5.6.9 An examination of ***Table 7*** shows that despite differences in assumptions and changes made throughout the process, the lowest ratio was 25.4 (for FY15) and the highest ratio was 27 (for FY16). Given the University's unexplained and unjustified accounting changes, the Association argues that the ratios provided by Ms. Joy indicate that the University has the ability to pay an award, reflective of the Association's salary proposal.

5.6.10 The Association only analyzed the ratios for FY 15 and FY16. This analysis was based on both the assumption of a two-year agreement, and the reality that as more years into the future were involved, the University was simply projecting numbers on numbers that themselves were projections, which yields no trusted or accurate results.

5.6.11 That said, the University clearly acknowledges that it has the ability to pay ratios beyond 26%. ***Table 8*** indicates the ratios that the University says it has the ability to pay. Otherwise, it would have had to instruct the Arbitration Board to not award its own salary proposal.

Table 7. All Operating Fund Ratios Calculated for FY15 and FY 16

UBC	Whose Proposal Was Costed	FY15	FY16
Tab 5.1 (July 13 Submission)	University	25.6%	25.8%
Tab 5.1 (July 31 revision)	University	25.6%	25.8%
Tab 5.1 (August 19 revision)	University	25.6%	25.7%
Para 38, September 18 Reply Submission	FA	26.0%	26.7%
Para 39, September 18 Reply Submission	FA	26.2%	27.0%
Table 5.1 (September 18 Reply Submission, Tab 4)	FA	26.0%	26.7%
Table 5.1 (September 18 Reply Submission, Tab 4)	FA	26.2%	27.0%
Table 5.1 (September 18 Reply Submission, Tab 6)	University	25.6%	25.7%
Table 5.1 (September 18 Reply Submission, Tab 6)	University	25.8%	25.9%
PwC Expert Report			
Schedule 5.1 (August 26 Submission)	FA	25.4%	25.8%
Schedule 5.1A (October 5 Submission)	FA	25.7%	26.1%
Schedule 5.1B (October 5 Submission)	FA	25.6%	26.0%

Table 8. University's Ability to Pay Ratios

14/15	15/16	16/17	17/18	18/19
25.8%	25.9%	26.1%	26.3%	26.6%

*5.7 **The Analysis***

5.7.1 In Paragraph 11 of the University's Reply Submission on Ability to Pay of September 18, 2015, the University asserts:

> The Previous Award established the appropriate methodology to be followed in determining the "reasonable balance" or "ratio," presumably to permit the parties

> [to] do the calculations on their own. The University saw the Previous Award as setting a roadmap that could be utilized in the future thereby avoiding the prospect of each party having to retain outside experts to resolve the ability to pay issue.

5.7.2 If such a roadmap actually existed, the number of data requests that the Association had to make of the University, the number of times the University restated previous calculations, and the debates about what was and was not included would not have had to occur.

5.7.3 As pointed out by Ms. Joy, the University has inflated the bargaining unit salaries for FY 16 by inappropriately including salaries of strategic hires that have not yet been made.

5.7.4 In Paragraph 22[d] of the University's Reply Submission on Ability to Pay of September 18, 2015, the University questions Ms. Joy's note that the University had made very few new or strategic hires as of July 1, 2015. We have extensively discussed how hiring unfolded in FY14 and FY15 starting at Paragraph 5.4.15, and provided a number of Tables, including ***Table 1*** and ***Table 6*** to document why the University's hiring projection for FY16 seems extremely optimistic.

5.7.5 The University dismisses its cavalier approach to reporting growth to the Arbitration Board by stating "If some of the strategic hires are not made this year, they will be made next year and beyond."

5.7.6 The numerator is for actual bargaining unit member salaries in the specific fiscal year. If someone is not appointed until July 1, then only ¾ of their salary can be included in the numerator for the FY. If someone is not appointed until January 1, then only ¼ of their salary can be included in the numerator for the FY. If faculty members are not hired until "next year and beyond," their salary cannot be included in the numerator for the current FY at all. The University must not be permitted to inflate FY16 with salaries of strategic hires that will be made "next year and beyond."

5.7.7 In Paragraph 22[f] the University suggests that the Association concedes that

> "the second year of the award would be beyond the University's ability to pay. We note that Ms. Joy's comparison point is the high watermark of 26.1% in FY11. This is not looking at the "historic range" as determined by the Previous Award, but rather picking the single highest ratio as the determinant of ability to pay."

5.7.8 The Association strenuously objects to this mischaracterization of what Ms. Joy states—rather, she reported on whether her calculations fell within the range or outside the range. She indicated in her Expert Report that 26.0% is within the range.

5.7.9 As for the second year FY16, Ms. Joy did state that 26.6% fell out of the historical range, and then went on to explain why it did:

> The University assumes faculty growth [of] 63 positions, which results in a total forecast annual cost of 6.8 million (representing an average starting salary of $107,000). Based on the data provided on UBC Tab 5.6, the 2-year average of faculty growth was only 21 and the 2-year average new hires salary was only $86,461.
>
> Expert Report, paragraph 36(a)

5.7.10 In other words, Ms. Joy was noting that because the University had grossly overestimated faculty growth for FY16, the ratio was driven up higher than if the University had used more realistic faculty growth numbers based on how many faculty members had been hired to date in FY16, and had used estimates from previous years to determine the number likely to be hired **and** appointed in FY16.

5.7.11 The University claims in Paragraph 22[f] that Ms. Joy notes "the salary award in the second year of the agreement (FY14) implemented by the Previous Award was beyond the University's ability to pay." She did not state this at all. What she said in Paragraph 36 of her Expert Report was "A similar result occurred during the 2013 Arbitration in the 2013 Ratio Analysis, where using the GPOF, the FY13 ratio was within the historic range, but the **projected** ratio for FY14 was not." Note the use of the word "projected." She was referring to doing the analysis based on the Faculty Association's proposal at that time for salary increases of 5% and 5%.

5.7.12 The actual ratios achieved in the arbitration Award were definitely within the University's ability to pay. ***Table 10*** shows two versions of the ratio, one calculated from the Operating Fund, and one calculated from the GPOF. All of the calculations were done by the University. There are multiple calculations during the submission process due to errors in reporting. The highlighted numbers show the changes.

5.7.13 To understand why there are two sets of ratios presented, the Arbitration Board must note that the University arbitrarily and unilaterally changed its accounting procedures several years ago without notifying the Association, despite the wording of the Collective Agreement. The University knows full well that the arbitrations prior to the 2013 one used the GPOF, but tries to claim that the GPOF wasn't enshrined in the Collective Agreement. That is misleading, at best. Arbitrations in 1989, 1994, and 1997 all used the GPOF. So that was clearly the understanding of the Parties.

5.7.14 While we believe that there should be some consequence to the University for not being able to replicate numbers used in previous arbitrations, we object to its assertion that the GPOF ratio for the second year of the previous Arbitration Award is out of range. This is what the University states about the two funds (GPOF and current Operating Fund):

> [26] The GPOF, however, ceased to exist as a separate fund at the end of FY 2013 with the result that it is no longer possible to identify/segregate expenditures that would have been previously booked to this fund. **This presents a problem in replicating the methodology that was used in the previous arbitration proceeding to create Appendix B.** (emphasis added)
>
> [27] The Operating Fund now blends, and does not segregate, the former GPOF, Continuing Studies and Fee for Service funds. It also includes ancillary operations, which used to be a separate fund.
>
> [28] **The University submits that the preferred methodology for creating Appendix B going forward, that maintains the principles both expressed and implied in the Previous Award, is to use the current Operating Fund** excluding ancillary operations (which were always excluded) and make

> adjustments to restate Appendix B for prior years on an equivalent basis; i.e. equivalent to the current Operating Fund. (emphasis added)
>
> UBC Ability to Pay Submission, July 13, 2015

5.7.15 Thus the University, while claiming that the current Operating Fund is the preferred methodology, and noting that the GPOF ceased to exist at the end of FY13, wants to make issue of a ratio analysis of a manufactured GPOF to claim that the previous arbitration Award exceeded the University's ability to pay for FY14. These ratios are shown in ***Table 9***.

Table 9. Comparison of Ratios for FY10 through FY 14, GPOF

Source	FY10	FY11	FY12	FY13	FY14
Tab 8.1, July 13, 2015	28.5%	28.7%	28.8%	28.1%	28.9%
Tab 8.1, July 31, 2015	28.5%	28.7%	28.8%	28.2%	28.9%
Tab 8.1, August 19, 2015	28.5%	28.7%	28.8%	28.3%	28.9%

5.7.16 The Association does not agree that 28.9% shown for FY14 in ***Table 9*** exceeds the **reasonable balance** spoken of in Article 11.02(e) of the Collective Agreement. The reasonable balance is not just about decimals. The Association also notes that using the GPOF analysis, the FY13 award of the previous arbitration turned out to be the lowest ratio in the historical series, which means that the University had the ability to pay considerably more than a GWI of 2.45% in FY13.

5.7.17 Though the Association does not agree with the University unilaterally abandoning the GPOF without achieving this in collective bargaining, it is resigned to relying on analysis based on the current Operating Fund. ***Table 10*** indicates that the previous arbitration did not result in an award that was beyond the University's ability to pay when the ratios are calculated using the current Operating Funds. Again, FY13 is the lowest ratio in the range, and FY14 is not the highest ratio, and the conclusion to be drawn using the current Operating Fund, which the University says is its preferred method, is that the University in fact had the ability to pay more in the second year of the previous Award as well.

Table 10. Comparison of Ratios for FY10 through FY 14, Current Operating Fund

Source	FY10	FY11	FY12	FY13	FY14
Tab 5.1, July 13, 2015	25.7%	26.0%	25.8%	25.5%	26.0%
Tab 5.1, July 31, 2015	25.7%	26.0%	25.8%	25.6%	26.0%
Tab 5.1, August 19, 2015	25.7%	26.1%	25.9%	25.6%	26.0%

5.7.18 Paragraph 36(d) of UBC's Ability to Pay Reply Submission of September 18, 2018 states that

> Included the incremental cost of the 3% for FY15 which also impacts FY16. The problem here is that FY15 is already complete. If the Arbitration Board awards any salary increase in FY15 the University will have to spend revenue realized in FY16 to pay for it. This means that there will be less revenue (expenditures) in

FY16 available to fund FY16 increases, with the result that the ratio will increase (reduction in expenditure denominator)."

5.7.19 The University argues that it has already spent all of its money for FY15, and therefore, even if the University had the ability to pay an Award in FY15, based on the ratio analysis, it won't be able to do so now. This assertion, and the suggestion that the Arbitration Board would even consider it, is indeed remarkable.

5.7.20 In its August 31, 2015 Submission, the University discussed the narcotic effect of arbitrations on negotiations. While the Association finds this characterization insulting, to say the least, we would like to remind the Arbitration Board that the University is more likely the Party engaging in this narcotic effect. It is clear that if it could convince the Arbitration Board that it had spent its money already, it would always seek to go to arbitration on salary issues.

5.7.21 The University claims in paragraph 49 of its Ability to Pay Reply Submission of September 18, 2015 that it simply does not have the ability to pay an award beyond what it has offered. We believe that its analysis is flawed, and that the use of University employees to calculate the ratio using unaudited numbers is at best questionable.

5.8 ***The Conclusions***

5.8.1 The University is relying on the Arbitration Board to overlook the many ways the University manipulates numbers to produce ratios that somehow support whatever the PSEC mandate directs that it should pay. In the previous arbitration, the University argued that its ratios proved that it had no ability to pay more than 2 and 2. In this current round, somehow the ratios prove that the University has no ability to pay more than 0 and 1. How is it that PSEC knew exactly what the University's ability to pay was in two rounds of bargaining?

5.8.2 Ms. Joy updated the analysis provided in the earlier PwC Expert Report based on new or revised information **provided by the University** since she submitted her Report, including the University's Reply Submission, dated September 18, 2015 ("UBC's Reply Submission").

5.8.3 In paragraphs 9 through 11, Ms. Joy itemizes the new information, the University's acknowledgement of some errors, and explained which benefits were excluded from her analysis.

5.8.4 In Paragraphs 13 through 20, Ms. Joy explains her disagreement with some of the University's assumptions and analysis and indicates adjustments she believes need to be made to the University's analysis of the ratios.

5.8.5 In Paragraph 22, Ms. Joy updates the ratios, and finds that they fall within the historical range for FY15 and FY16. She finds, however, that if she makes a reduction to the denominator for FY16, due to the University having to pay FY15 salaries during FY16 that the ratio for FY16 falls outside the historic range. The Association asserts that Ms. Joy has taken a conservative approach in this analysis: The ratio moved from 26.1% to 26.2% when she made this change. The Collective Agreement does not actually talk about a "historic range." Rather, it points to a "reasonable balance," and it is not clear

that given the sensitivity of numbers used to calculate the ratio, that 26.2% is meaningfully different than 26.1%.

5.8.6 In any event, in Paragraph 23, Ms. Joy recalculates the ratio assuming a GWI award of 2.5% effective July 1, 2014 and 2015, which is lower than the Association's proposal of 3% and 3%. Ms. Joy notes that the ratios fall within the historic range.

5.8.7 The Association submits, therefore, that under the terms of the Collective Agreement, the University does have the ability to pay the costs of the Association's GWI proposal.

6. Article 11.02e i-iv ("Considerations After Ability to Pay is Found")

6.1 The Need For The University To Maintain Academic Quality (Article 11.02(e)(i))

6.1.1 Article 11.02(e)(i) directs the Arbitration Board to consider the need for the University to maintain its academic quality by retaining and attracting Faculty Members, Librarians, and Program Directors of the highest caliber.

6.1.2 Paragraphs 12-16 of the University's August 31, 2015 Submission they argue that the data does not support a salary increase on the basis of the University's ability to attract retaining and attracting Faculty Members, Librarians, and Program Directors of the highest caliber. The Association disputes this.

6.1.3 The Association maintains its position. UBC is an elite university and as such it competes with other top universities to attract and retain highly skilled and sought after faculty. In order to attract and maintain its complement of skilled faculty the University must keep salaries competitive.

6.2 Changes in the Vancouver and Canadian Consumer Price Indices

6.2.1 There appears to be no dispute between the Parties about the appropriate data with which to address this question. Both parties used data contained in Statistics Canada Table 326-0020 – Consumer Price Index, monthly. The Association wishes to make two points with respect to those data.

A) Actual Price Inflation during the first year of the renewal agreement

6.2.2 The first point the Association wishes to make is that the actual CPI inflation that occurred during what will be the first year of the renewed Collective Agreement, averaged between Canada and Vancouver, was slightly more than 1%. Since the first year of the renewed Collective agreement runs from July 1, 2014 to June 30, 2015 it is possible to calculate exactly the percentage rise in the CPI during that period, as CPI data up to and including July, 2015 were available from Statistics Canada. The CPI increased during what will be the first year of the renewed Collective Agreement (July 2014 to July 2015) by 1.3% (Canada) and 1.1% (Vancouver), or an average of 1.2%. This is correctly reported in the University's August 31, 2015 Submission in the table labeled "Consumer Price Indexes" in paragraph [27].

6.2.3 The University claims in paragraph [28] that the "Canada CPI has been trending around an annual change of 1% since the beginning of this year, with the B.C. and Vancouver inflation rates slightly lower." The Association would not use the word "trending" to

describe the CPI, which exhibits volatile movements around its long term average of 2%, but agrees that the month over month CPI inflation rate for Canada has averaged slightly over 1% since the beginning of the year and a little over 1.4% over the past twelve months, with the Vancouver inflation rate slightly lower. The Association does not dispute that CPI inflation was unusually low during what will be the first year of the renewed Collective Agreement, only slightly above 1%.

6.2.4 The University is offering 0% GWI in the first year of the renewed Collective Agreement. This is slightly more than one percent lower than actual CPI inflation during that period. The University's argument that our year end non-base bonus constitutes "an increase in compensation to members of the bargaining unit each year of the Collective Agreement" (Paragraph 33, University's August 31, 2015 Submission) is factually false, as we demonstrate, starting at Paragraph 6.4.23.

B) Projected Price Inflation Subsequent to the First Year of the Renewal Agreement

6.2.5 The second point the Association wishes to make in response to the University's arguments in paragraphs 22-33 of its August 31, 2015 Submission is that projections of CPI inflation for the second year of the renewed Collective Agreement (and indeed for future projections of any length) should be equal to the Bank of Canada's target rate of 2%. This point was made in paragraphs 6.03.2 to 6.03.7 of the Association's August 31, 2015 Submission and will not be repeated here. The unusually low inflation rate in the past year has been the result of extreme movements in volatile items, particularly gasoline prices, which were down 12.2% in the 12 months to July 2015. The core inflation rate was actually up 2.4% in the 12 months to July 2015. (Source http://www.statcan.gc.ca/daily-quotidien/150821/dq150821a-eng.htm).

6.2.6 In paragraph 31 of the University's August 31, 2015 Submission the University asserts "In terms of projections for inflation over the coming years, the University's salary proposal is in line with the changes that are forecasted for Canadian CPI increases." This is not true. The University's proposed GWI for the second year of the renewed Collective Agreement is either 0.85% or 0.9% depending on the proposal and their GWI proposal for subsequent years is never more than 1.5%. Yet their own tables in paragraph 31 and 32 show an average projection for inflation of 2.2% in 2016 and 2% thereafter. The University's GWI proposals are not in line with projected inflation, but well below projected inflation.

C) Approaches to measuring annual inflation

6.2.7 There are two approaches to measuring annual inflation, whether in prices, wages, or earnings. One is the month-over-month approach in which inflation is measured as the percentage change in the value of the index between (say) January 2012 and January 2013. This is the approach Statistics Canada uses when reporting inflation on a monthly basis. The other is the annual average inflation measure in which inflation is measured as the percentage change in the average value of the index from one year to the next. This is the approach Statistics Canada uses when reporting inflation on an annual basis. Both approaches are perfectly correct although the month-over-month approach can be calculated each month of the year as data become available, while the annual average inflation measure can only be calculated at the end of each year. Consequently the month over month measures are available from Statistics Canada up to June or July

2015, depending on the data in question, while the annual average inflation measure is only available up to 2014.

6.2.8 The Association has used the month-over-month approach throughout. The University sometimes uses the month-over-month approach (the table in paragraph 27, University's August 31, 2015 Submission) and sometimes uses the annual average inflation measure (the tables in paragraphs 29 and 35). Unfortunately as the annual average inflation measure is not available for 2015 for either prices or earnings, the University has developed an unorthodox approach to measuring 2015 which they call the year-to-date approach but which is actually a partial year average in which inflation is measured as the percentage change in the average value of the index from one partial year to the corresponding next partial year. It goes without saying that this is a completely different measure from the Statistics Canada annual average inflation measure which they use to calculate price and earnings inflations for the years preceding 2015. The Association has no objection to the use of the annual average inflation measure for years in which the data are available, but strongly recommends the Board use the month-over-month approach to measure annual inflation after December 2014, as Statistics Canada does.

6.3 Changes in British Columbian and Canadian Average Salaries and Wages

6.3.1 The Collective Agreement is not clear on what data are to be used to assess changes in in British Columbian and Canadian average salaries and wages. The Association believes that the Labour Force Survey (LFS) of average weekly wages (AWW) best fits the Collective Agreement. It reports "the usual wages or salary of employees at their main job." The University, in paragraphs 34-36 of its August 31, 2015 Submission, uses average weekly earnings data from the Survey of Employment Payrolls and Hours (SEPH).

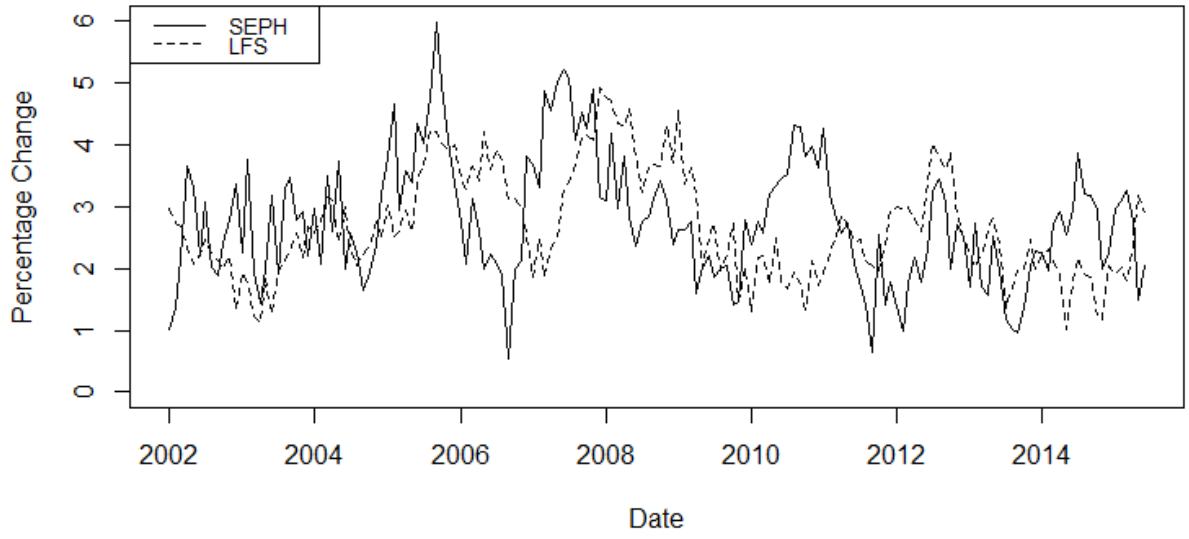
A) Actual Wage Inflation During the First Year of the Renewal Agreement

6.3.2 The average weekly wage (AWW) inflation that occurred during what will be the first year of the renewed Collective Agreement, averaged between Canada and British Columbia, was approximately 3.4%. This result is the same whether all employees or only full-time employees are considered. Since the first year of the renewed Collective agreement runs from July 1, 2014 to June 30, 2015 it is possible to calculate exactly the percentage rise in AWW during that period, as AWW data up to and including August, 2015 are now available from Statistics Canada. AWW increased during that period (July 2014 to July 2015) by 3.6% (Canada) and 3.1% (British Columbia), or an average of 3.4%. This is reported in Table 5 in the Association's August 31, 2015 Submission.

6.3.3 The University, in its August 31, 2015 Submission, relies on on Statistics Canada's Survey of Employment, Payrolls and Hours (SEPH) to report 2014 inflation in Average Weekly Earnings (AWE) of 2.7% (Canada) and 2.3% (British Columbia), using the annual average inflation approach. SEPH data are available monthly so it is possible to calculate the month to month annual inflation rate in average weekly earnings. The SEPH data are not available for July, 2015 yet, but the June 2014 to June 2015 month over month increase in the SEPH average weekly earnings was 2% (Canada) and 2.9% (BC) for an average of 2.45%.

6.3.4 The long term averages of the wage or earnings inflation rates produced by the two data sources are almost identical, but both series are quite volatile, particularly the SEPH average weekly earnings data, as can be seen in ***Figure 1***. The Association maintains that the LFS data are preferable to the SEPH data for two reasons. First, the Collective Agreement specifies "average wages and salaries" not earnings. Second, the Labour Force Survey is a household survey and compares the usual wages or salary of an employee at his or her main job over time. Consequently it measures wages directly. The SEPH data is a business payroll survey and the average weekly earnings are derived by dividing total weekly payrolls by the payroll employment. Thus changes in average earnings reflect a number of factors other than wage growth, including changes in composition of employment by industry, occupation and level of job experience, as well as average hours worked per week.

Figure 1. SEPH Earnings and LFS Wages, Inflation Rates, Canada, Jan 2002 – June 2014



6.3.5 The volatility of the two data sources over time does make it difficult to assess wage inflation over a single year. The Association has no proposed solution to this problem and simply reports both data sets, monthly, with associated month-over-month rates of change since April 2012 in in ***Table 11***. The full series, since the inception of the SEPH, is presented in **Tab 7** in the Book of Evidence.

Table 11. Month-over-Month Wage Inflation Rates, January 2002-August 2015

Month over Month Wage Inflation Rates				
	LFS[1]		SEPH[2]	
Date	Canada	BC	Canada	BC
Apr-12	2.8%	1.7%	2.2%	2.3%
May-12	2.6%	0.9%	1.8%	0.5%
Jun-12	3.4%	1.6%	2.3%	3.7%
Jul-12	4.0%	0.0%	3.2%	4.3%
Aug-12	3.8%	0.5%	3.4%	2.7%
Sep-12	3.6%	1.7%	3.1%	2.4%
Oct-12	3.9%	3.5%	2.0%	2.4%
Nov-12	2.9%	1.6%	2.7%	2.5%
Dec-12	2.5%	1.0%	2.5%	2.8%
Jan-13	2.2%	3.8%	1.7%	0.2%
Feb-13	2.0%	1.6%	2.7%	2.2%
Mar-13	2.2%	1.8%	1.7%	0.8%
Apr-13	2.6%	3.6%	1.6%	1.1%
May-13	2.8%	3.8%	2.5%	2.7%
Jun-13	2.4%	2.5%	2.0%	-0.5%
Jul-13	1.3%	4.8%	1.2%	-0.3%
Aug-13	1.7%	3.8%	1.0%	0.3%
Sep-13	2.0%	2.8%	1.0%	0.8%
Oct-13	2.0%	2.8%	1.4%	-0.1%
Nov-13	2.5%	4.3%	2.0%	3.0%
Dec-13	2.0%	1.4%	2.3%	2.0%
Jan-14	2.2%	-0.2%	2.2%	2.5%
Feb-14	2.3%	0.1%	2.0%	1.4%
Mar-14	2.1%	1.6%	2.7%	3.0%
Apr-14	1.9%	0.7%	2.9%	2.6%
May-14	1.0%	-0.2%	2.5%	2.5%
Jun-14	1.8%	0.5%	2.9%	2.3%
Jul-14	2.2%	-0.6%	3.9%	1.7%
Aug-14	1.9%	0.9%	3.2%	4.0%
Sep-14	1.9%	0.4%	3.2%	2.9%
Oct-14	1.2%	-1.8%	2.9%	3.7%
Nov-14	1.2%	-0.6%	2.0%	0.6%
Dec-14	2.0%	2.7%	2.3%	0.6%
Jan-15	1.9%	3.2%	3.0%	3.2%
Feb-15	2.0%	3.4%	3.1%	2.7%
Mar-15	1.8%	4.2%	3.3%	1.9%
Apr-15	2.3%	5.4%	2.8%	-0.2%
May-15	3.2%	4.5%	1.5%	1.4%
Jun-15	2.9%	4.4%	2.0%	2.7%
Jul-15	3.6%	3.1%	1.8%	3.0%
Aug-15	3.6%	3.5%		

Notes and Sources:

[1] Table 282-0069 Labour Force Survey estimates (LFS), wages of employees by type of work, unadjusted for seasonality monthly (current dollars)

[2] Statistics Canada, CANSIM Table 281-0026 Survey of Employment, Payrolls and Hours (SEPH), average weekly earnings, all employees, excludes overtime.

6.3.6 What is clear from the data is that the wage inflation that occurred during what will be the first year of the renewed Collective Agreement was between 2.5% and 3.5%. The University is offering a GWI of 0%.

B) Projected Wage Inflation Subsequent to the First Year of the Renewal Agreement

6.3.7 In the Association's August 31, 2015 Submission we note that, historically, wage inflation runs about 1% higher than price inflation, on average. That result is illustrated in ***Table 12***.

6.3.8 ***Table 12*** presents the LFS average weekly wages and consumer price index calculated on a July over July basis. As the University has shown a preference for the annual average inflation measure we produce a version of ***Table 12*** using the SEPH index and the CPI index measured on an annual average inflation measure basis.

Table 12. Annual Earnings and Price Inflation, Canada and BC (Annual Average Basis)

	Canada				British Columbia			
	Average Weekly Earnings (SEPH)		Consumer Price Index		Average Weekly Earnings (SEPH)		Consumer Price Index	
Year	Index	% Change	Index	% Change	Index	% Change	Index	% Change
2001	637.41		97.8		640.99		97.7	
2002	652.98	2.4%	100	2.2%	654.7	2.1%	100	2.4%
2003	669.91	2.6%	102.8	2.8%	666.98	1.9%	102.2	2.2%
2004	687.08	2.6%	104.7	1.8%	677.61	1.6%	104.2	2.0%
2005	715.64	4.2%	107	2.2%	704.1	3.9%	106.3	2.0%
2006	731.81	2.3%	109.1	2.0%	722.92	2.7%	108.1	1.7%
2007	763.86	4.4%	111.5	2.2%	748.24	3.5%	110	1.8%
2008	787.21	3.1%	114.1	2.3%	767.9	2.6%	112.3	2.1%
2009	803.84	2.1%	114.4	0.3%	778.83	1.4%	112.3	0.0%
2010	831.51	3.4%	116.5	1.8%	799.04	2.6%	113.8	1.3%
2011	850.17	2.2%	119.9	2.9%	819.75	2.6%	116.5	2.4%
2012	869.57	2.3%	121.7	1.5%	841.58	2.7%	117.8	1.1%
2013	884.77	1.7%	122.8	0.9%	850.3	1.0%	117.7	-0.1%
2014	908.91	2.7%	125.2	2.0%	869.82	2.3%	118.9	1.0%
Average		**2.8%**		**1.9%**		**2.4%**		**1.5%**

Source: Statistics Canada. Table 281-0027 - Survey of Employment, Payrolls and Hours (SEPH), annual and Statistics Canada. Table 326-0021 - Consumer Price Index, annual (2002=100)

6.3.9 In this sample of 14 years, SEPH earnings inflation averaged about 1% more than CPI inflation. Thus the rule of thumb that wage inflation averages about 1% more than price inflation holds for both the LFS wage data and the SEPH earnings data. Given that future projections of price inflation are 2%, future projections of wage inflation should be 3%.

6.3.10 In paragraph 36 of the University's August 31, 2015 Submission, the University asserts: "Both the absolute increases in BC and Canadian Average Salaries and Wages and the trend do not support salary increases beyond the University's proposal, particularly when the Collective Agreement already provides for an annual 1% lump sum increase in salaries in each year of the proposed agreement." This is not true. First, as explained below, starting at Paragraph 6.4.23, the non-base annual payment is not equivalent to a 1% increase in salaries each year. Second, the University's proposed GWI for the second year of the renewed Collective Agreement is either 0.85% or 0.9% depending on which proposal is their final proposal, and their GWI proposal for subsequent years is never more than 1.5%. Yet their own preferred measure of earnings inflation, and their own preferred approach to measuring annual changes supports the Association's position that wage inflation runs about 1% higher than price inflation, on average and their own tables in paragraph [31] and [32] show an average projection for inflation in of 2.2% in 2016 and 2% thereafter. The University's GWI proposals for years subsequent to 2014/15 are well below the 3% projection that is consistent with its own data.

6.4 ***Salaries And Benefits At Other Canadian Universities (Article 11.02(e)(iv))***

6.4.1 In paragraph [39] of its August 31, 2015 Submission, UBC asserts that:

> the data that was presented in the last arbitration showed that "[s]alaries at UBC have fallen somewhat behind its relative place in terms of academic quality": paragraph 104. That is not the case now.

6.4.2 The Association disputes this.

6.4.3 First, we note again that, in terms of size and academic quality there are only a small handful of true comparators. As Arbitrator Taylor said in the 2013 award:

> [99] What is clear from these rankings is that UBC is successfully competing on an international scale, at a very high level. The picture that emerges from the rankings overall is that UBC is second in Canada only to the University of Toronto, with McGill in third. Those are the only three Canadian universities that consistently rank highly in the international rankings. There is a sharp drop-off after those three, with none of the other universities approaching UBC in any of the rankings.

6.4.4 Second, the University argues in its August 31, 2015 Submission:

> [42] As the table at Tab A shows, UBC has increased its position with respect to faculty salaries with an average annual salary second only to the University of Toronto.
>
> [43] We have enclosed the data considered in the Previous Award and the current data, to show that there is no basis for an argument now that UBC salaries have fallen behind comparator universities.

6.4.5 This is not correct. The data show that UBC has not increased its position. By virtue of omitting certain crucial data and creating its own data in place of the original data the University has misrepresented the results.

6.4.6 In Tab A of the University's August 31, 2015 Submission, the University presents data from two sources. The first is Statistics Canada for 2010-2011 (data that are no longer collected by Statistics Canada. Unfortunately, 2010-2011 was the last year the data were collected). The second source is from the National Faculty Data Pool for 2013-14. These data are not publicly available but the Association was able to acquire the data from the NFPD through CAUT.

6.4.7 There are a number of omissions and mistakes in the University's reporting. First, the University has used Non-Medical Dental faculty only, which is appropriate, but it included faculty with senior administrate duties, which is inappropriate as those roles are not in our bargaining unit. The difference in averages is not trivial, especially at the full professor rank but since the University has consistently included faculty with senior administrate duties for the comparator universities as well it makes no substantial difference to the rankings.

6.4.8 Second, the University has excluded Lecturers/Instructors from the data they report, although those data exist from both data sources.

6.4.9 Third, the University has miscalculated the overall averages. They have calculated the average of averages (of the three ranks they did include), rather than report the true average salary. Calculating the average of sub-group averages is completely incorrect in cases like this, where the number of employees in each sub-group differs. Rather than take the average of each rank, and then take the average of those averages, the University should have simply taken the average salary of all employees. Those will be different numbers.

6.4.10 For example, according to the Statistics Canada data the average salary of Full professors at UBC with senior administrative appointments included in the data set in 2010-2011 was $172,296 and the average salary of Full professors at UBC without senior administrative appointments included in the data in 2010-2011was $153,210.

6.4.11 The average of these two averages is $162,748.50. Yet Statistics Canada reports the average Full professor salary to be $155,372 (UBC subsequently added 1% and reported it as $156,926). The reason for the difference is that there are far more full professors at UBC without senior administrative appointments than full professors at UBC with senior administrative appointments. Calculating the average salary of full professors as the average of averages gives the wrong answer.

6.4.12 As another example, according to the NFDP data in 2013-14, at UBC the average salary of male full professors without senior administrative appointments included in the data was $171,962 and the average salary of female full professors without senior administrative appointments was $165,615. The average of these two averages is $168,770.50. Yet the NFDP reports the average full professor salary without senior administrative appointments included in the data at UBC in 2013-14 to be $170,526. (UBC reports this average as $174,561 because they have again included non-bargaining unit members in their August 31, 2015 Submission). The reason for the

difference is that there are far more male full professors at UBC than female full professors at UBC. Calculating the average salary of Full professors as the average of averages gives the wrong answer. This is illustrated in table ***Table 13*** below.

Table 13. Calculating Average Salaries, Two Ways

	Average Full Professor Salary At UBC as Calculated Correctly by NFDP		Average Full Professor Salary at UBC as Calculated Incorrectly by UBC's "average of averages" procedure	
	Number	Average Salary		Average Salary
Male Full Professors	561	$ 171,962.00	Male Full Professors	$ 171,962.00
Female Full Professors	162	$ 165,615.00	Female Full Professors	$ 165,615.00
Total	723	$ 170,526.00	Average of Averages	$ 168,788.50

6.4.13 In ***Table 14*** the 2010-11 average salaries of full-time faculty members for the top paying universities is correctly calculated from the Statistics Canada data using only faculty without senior administrative appointments, including all full-time faculty (full professors, associate professors, assistant professors, and lecturers/instructors), and calculating the average salary correctly. The UBC average salary has been corrected by adding 1% to the number it provided to Statistics Canada. UBC ranked 7th, behind Toronto, Queens, Alberta, McMaster and Waterloo, among U15 Universities.

Table 14. 2010-11 Average Salaries of Full-Time Faculty Members

Rank	**University**	**Mean Salary**
1	Toronto	$135,973
2	Queens	$130,897
3	Alberta	$130,225
4	York	$128,092
5	McMaster	$124,399
6	Waterloo	$122,188
7	**UBC**	$121,412
8	Calgary	$120,350
9	Ryerson	$120,220
10	Western	$118,876
11	Ottawa	$115,680

6.4.14 In ***Table 15*** the 2013-14 average salaries of full-time faculty members, by rank and overall, for a large number of Canadian Universities is reported. These averages are those provided by NFDP and have not been altered by the Association. They include the Lecturer/Instructor group, which UBC excludes in Tab B, only include faculty without senior administrative appointments and use the overall average provided by NFDP, which is calculated correctly. The Association notes that the University has replaced the overall average provided by NFDP with its own average of averages. The final columns in Tab A of the University's August 31, 2015 Submission are UBC calculations, not Statistics Canada or NFDP calculations.

Table 15. 2013-14 Average Salaries of Full-Time Faculty Members, By Rank and Overall

	Lecturer/Instructor		Assistant Professor		Associate Professor		Full Professor		Total	
Rank	**University**	**Mean Salary**	**University**	**Mean Salary**	**University**	**Mean Salary**	**University**	**Mean Salary**	**University**	**Mean Salary**
1	York	$118,089	Queen's	$125,158	Toronto	$146,249	Toronto	$186,754	Toronto	$149,639
2	Toronto	$111,109	Toronto	$115,878	York	$139,075	Alberta	$175,096	Alberta	$143,891
3	Waterloo	$100,922	Laurentian	$110,844	McMaster	$136,250	York	$174,760	Queen's	$143,132
4	Carleton	$99,116	Guelph	$110,424	Guelph	$133,862	**UBC**	$170,526	York	$141,957
5	Trent	$97,840	**UBC**	$109,794	Queen's	$133,085	McMaster	$166,498	McMaster	$137,943
6	Western	$97,395	Western	$109,049	Waterloo	$132,129	Waterloo	$164,792	Guelph	$135,974
7	Dalhousie	$96,878	Saskatchewan	$107,136	Brock	$131,495	Saskatchewan	$163,618	**UBC**	$135,418
8	Ottawa	$94,890	Ottawa	$105,674	**UBC**	$130,241	Calgary	$162,001	Saskatchewan	$135,346
9	**UBC**	$94,398	York	$105,647	Ottawa	$130,227	Trent	$161,316	Windsor	$134,449
10	Brock	$94,360	Windsor	$104,554	Laurentian	$129,989	Western	$161,297	Waterloo	$133,102
11	Laurier	$93,642	Alberta	$104,548	Windsor	$127,978	Ottawa	$161,073	Brock	$132,890
12	Victoria	$92,953	Waterloo	$102,224	Western	$127,837	Guelph	$160,578	Western	$130,908
13	Lakehead	$92,862	Carleton	$101,670	Saskatchewan	$126,464	Windsor	$160,411	Trent	$130,654
14	Calgary	$91,597	McMaster	$101,360	Trent	$124,746	Brock	$159,493	Ottawa	$129,983
15	Simon Fraser	$91,593	Brock	$101,271	Laurier	$124,505	Laurier	$157,058	Laurentian	$127,113
16	Windsor	$91,001	Dalhousie	$100,739	Carleton	$124,023	Queen's	$156,415	Calgary	$125,798
17	New Brunswick	$88,886	Calgary	$99,648	Alberta	$122,896	Laurentian	$155,572	Dalhousie	$124,440
18	Lethbridge	$87,924	Simon Fraser	$98,774	Calgary	$122,114	Lethbridge	$150,591	Carleton	$122,842
19	McMaster	$86,905	Trent	$98,691	Lakehead	$121,964	Dalhousie	$149,287	Laurier	$122,790
20	Laurentian	$86,757	Laurier	$96,349	Dalhousie	$117,303	McGill	$148,591	Lakehead	$122,400
21	Saskatchewan	$84,860	McGill	$95,442	Memorial	$116,534	Lakehead	$148,179	Simon Fraser	$118,948
22	McGill	$83,485	Lakehead	$93,566	Simon Fraser	$115,453	Carleton	$148,098	Memorial	$118,404
23	Memorial	$73,737	Memorial	$93,333	Lethbridge	$112,910	Memorial	$146,391	Manitoba	$115,995
24	Mt Allison	$72,560	Victoria	$91,120	McGill	$111,680	Manitoba	$143,278	McGill	$114,899
25	Manitoba	x	Lethbridge	$89,171	Manitoba	$108,825	Simon Fraser	$143,013	Victoria	$114,415
26	Queen's	x	Manitoba	$88,361	New Brunswick	$107,753	Victoria	$140,047	New Brunswick	$114,108
27	Alberta	-	New Brunswick	$85,230	Mt Allison	$107,665	New Brunswick	$135,102	Lethbridge	$110,527
28	Guelph	-	Mt Allison	$81,993	Victoria	$107,194	Mt Allison	$132,595	Mt Allison	$105,492

6.4.15 In 2013-14 UBC again ranked 7th overall. If the average is more appropriately measured by the median, rather than the mean, which the Association argues is the more appropriate measurement, UBC ranks 10th. It is simply untrue to assert that the rankings have improved since 2010-2011.

6.4.16 In paragraph 38 of the University's August 31, 2015 Submission, the University argues that [in the 2013 arbitration] "It was also accepted that the inclusion of UBCO

significantly distorts the comparison between UBC and its national comparators, and therefore UBCO should be excluded." In the University's 2013 Submission it argued that "UBC Okanagan is transitioning from a college where the salaries are not comparable" at Paragraph 104. The Association submits that the transition of UBC Okanagan from a University-College to a campus of UBC is now largely complete. The transition started in 2005. In terms of faculty growth UBCO has now reached its full complement. If the University's assertion was at all true in 2013, it is certainly less true now. Currently approximately 25% of all the non-Medical/Dental faculty in the Assistant and Associate ranks whose data are used in Tab A are located at UBCO. Only at the Full professor rank is UBCO still transitioning, and since UBCO has very few Full professors this has no effect on the overall salary average. In addition, at the time of the transition UBC offered transferring faculty salaries based on the UBC salary structure, not the salary structure of the University-College from which they were transferring.

6.4.17 The numbers provided in ***Table 14*** and ***Table 15*** include all of the faculty who work for the University of Toronto, not just those who work at the main campus. If UBC wants to argue that the Arbitration Board should only consider UBCV, because UBCO drags down the average for the University, than University of Toronto's number must be increased as well. UBCV has been calculated by the University to have average salaries 1.025% higher than the overall average of the University. Given that the University of Toronto also has multiple campuses, with branch campuses having similar faculty distributions as UBCO, then the University of Toronto's overall average must be increased by 1.025% to approximate the average salary for the University of Toronto's main campus. It is important to compare apples with apples to make a determination of salary difference. UBCV cannot drop out the lower paid faculty members from UBCO to arbitrarily present a higher average salary that compares more favorably to the University of Toronto, which is forced to keep its lower paid faculty in the calculation of averages. This is not an accurate way to calculate one's standing in salary level.

6.4.18 The University misleadingly characterizes UVic and SFU as comparators to UBC but they are not.

6.4.19 The University does not benchmark any senior administrative staff salaries to either UVic or SFU. The University explains how it benchmarks salaries of <u>senior administrators</u>, including that of the University's president, as follows:

> As one of the highest ranked universities in Canada, and one of the top 40 universities in the world, **UBC seeks to retain and attract the best senior administrators it can by remaining competitive in its compensation practices** with other large research-intensive universities represented by the U15 (i.e., leading research-intensive universities in Canada), and **in particular the University of Toronto and the University of Alberta**, and with the global market for senior administrator talent generally.
>
> **Source**: UBC Executive Compensation Report, May 8, 2015, sent to PSEC (emphasis added)

6.4.20 Given how the University benchmarks senior administrator salaries, it is disturbing that the University would argue:

[46] As the data at Tab A demonstrates UBC faculty salaries remain substantially higher than the salaries at SFU and the University of Victoria. That gap would widen if an increase beyond the University's proposal was awarded in this case.

6.4.21 It is not unexpected that there should be a gap between UBC and UVic and SFU. The institutions are not comparable. There are huge differences in the classification and size of the three institutions. UBC is classified in the Medical Doctoral category of universities, and is ranked near the top in its category. UVic and SFU are classified as Comprehensive universities, and though they rank at the top of that category, that does not make them comparators to UBC. Both institutions fall substantially lower than UBC on international rankings, often not even being ranked at all.

6.4.22 The University's wage proposal is not sufficient to keep UBC in line with its true comparators, the University of Toronto, and a handful of others. Moreover, the University has tried to describe the annual lump-sum payment in various parts of its August 31, 2015 Submission as if it was a general wage increase that also helps improve salaries. Some examples:

> [9] While the Previous Award described a continuation of Lump Sum Payment of 1% (provided for in Article 5, Part 2 of the Collective Agreement) as being part of the status quo, it is nonetheless a reality that this 1% paid in each year of the proposed agreement is a general salary increase applied to the bargaining unit. Each continuing member of the bargaining unit will receive a lump sum payment of 1% of their annualized salary as at June 30. Sessionals receive a lump sum payment of 1% of their actual earnings in the past academic year (July 1 to June 30). Accordingly there is already a built-in general wage increase in the collective agreement.
>
> [33] Again, we point out that an annual 1% lump sum payment is built in to Article 5, Part 2 of the agreement. It may be "status quo" but **it is a real l% increase in compensation** to members of the bargaining unit **in each year of the collective agreement**. The University's proposed increases are on top of that.
>
> [36] Both the absolute increases in BC and Canadian Average Salaries and Wages and the trend do not support salary increases beyond the University's proposal, particularly when the collective agreement already provides for an annual 1% lump sum increase in salaries in each year of the proposed agreement.
>
> (emphasis added)

6.4.23 These statements are factually incorrect, something the University knows or reasonably ought to know. The annual lump-sum payment is not an increment, and it is not added to base salary. An individual member with an annual salary of $100,000 in academic year 2013/14 will have received, on June 30, 2014, a lump-sum payment of $1,000 making their annual total salary equal to $101,000. Under the University's proposal of a 0% GWI this individual will again have an annual salary of $100,000 in academic year 2014/15 and again receive, on July 30, 2015, a lump-sum payment of $1,000 making their annual total salary again equal to $101,000. This case is illustrated in ***Table 16***.

Table 16. Change in Total Salary Resulting From 0% GWI July 1, 2014

Base Academic Salary July 1, 2013- June 30, 2014	A	$ 100,000	**Calculations**
Lump-sum payment June 30, 2014	B	$ 1,000	
Total salary July 1, 2013- June 30, 2014	C	$ 101,000	A + B
Base Academic salary July 1, 2013- June 30, 2014	D	$ 100,000	From A
0% GWI July 1, 2015	E	$ -	0.00* D
Base academic salary July 1, 2014- June 30, 2015	F	$ 100,000	D+E
Lump-sum payment June 30, 2015	G	$ 1,000	0.1*F
Total salary July 1, 203- June 30, 2014	H	$ 101,000	G+F
% Increase in Total Salary	I	**0.0%**	**(H-C)/C**

6.4.24 Had the lump-sum payment been a GWI, ***Table 16*** would have shown that the base salary for this individual had gone from $100,000 to $101,000 on July 30, 2014 and had gone up from $101,000 to $102,010 on July 30, 2015. That is not what ***Table 16*** shows, because that is not how the lump-sum payments are applied.

6.4.25 Another way to think about this is to compare the impact of a true 1% GWI every year with the existing annual 1% lump-sum payment. In ***Table 17*** we compare two cases. In both cases the member's base academic salary is $100,000 at Year 1. In one case we apply an annual 1% lump-sum payment each year for five years, which, as previously demonstrated, results in an annual salary of $101,000 each year. In the second case we apply, instead of an annual lump-sum payment, an annual 1% GWI. Because the GWI, unlike the lump sum payment, goes into base salary, at the end of five years total salary has risen to from $101,000 to $105,101. A 1% GWI over five years increases a person's salary $5101 over 5 years, while a 1% annual lump sum payment increases a person's salary by $0 over 5 years.

Table 17. Comparison of Impact of 1% Annual Bonus v 1% GWI on Total Salary

Starting Salary: $100,000					
	Year 1	**Year 2**	**Year 3**	**Year 4**	**Year 5**
Salary after 1% annual bonus	$101,000	$101,000	$101,000	$101,000	$101,000
Salary after 1% annual GWI	$101,000	$102,010	$103,030	$104,060	$105,101
Salary needed to keep up with inflation of 2%	$102,000.00	$104,040.00	$106,120.80	$108,243.22	$110,408.08
Gap between inflation and 1% annual bonus	$1,000.00	$3,040.00	$5,120.80	$7,243.22	$9,408.08
Gap between inflation and 1% GWI	$1,000.00	$2,030.00	$3,090.70	$4,182.81	$5,307.08

6.4.26 The University is fully aware that the annual lump-sum payment is not equivalent to an annual GWI. First, the University processes annual salary increases, and reports those increases. As an illustration the Association presents (with her permission) the actual compensation history of a faculty member (her name has been removed to preserve her

privacy) to illustrate that the annual lump sum payment has done nothing to increase this member's salary.

Compensation History
Salary Change Details

Date of Change: 07/01/2012

Salary Change Summary

	Annual	Monthly
Current Salary:	102,227.400 CAD	8,518.950 CAD
Change:	2,504.520 CAD	208.710 CAD
Change Percent:	2.450	2.450
New Salary:	104,731.920 CAD	8,727.660 CAD

Job Information

Salary Plan: N/A Salary Administration Plan
Grade: N/A
Step: 0

Salary Components

Component	New Amount	Change Amount	Change Percent
UBC Monthly	8,727.660000 CAD Monthly	208.710000 CAD	2.450

Compensation History
Salary Change Details

Date of Change: 07/01/2013

Salary Change Summary

	Annual	Monthly
Current Salary:	104,731.920 CAD	8,727.660 CAD
Change:	2,513.520 CAD	209.460 CAD
Change Percent:	2.400	2.400
New Salary:	107,245.440 CAD	8,937.120 CAD

Job Information

Salary Plan: N/A Salary Administration Plan
Grade: N/A
Step: 0

Salary Components

Component	New Amount	Change Amount	Change Percent
UBC Monthly	8,937.120000 CAD Monthly	209.460000 CAD	2.400

Compensation History
Salary Change Details

Date of Change: 07/01/2014

Salary Change Summary

	Annual	Monthly
Current Salary:	107,245.440 CAD	8,937.120 CAD
Change:	0.000 CAD	0.000 CAD
Change Percent:	0.000	0.000
New Salary:	107,245.440 CAD	8,937.120 CAD

Job Information

Salary Plan: N/A Salary Administration Plan
Grade: N/A
Step: 0

Salary Components

Component	New Amount	Change Amount	Change Percent
UBC Monthly	8,937.120000 CAD Monthly	0.000000 CAD	0.000

Compensation History
Salary Change Details

Date of Change: 07/01/2015

Salary Change Summary

	Annual	Monthly
Current Salary:	107,245.440 CAD	8,937.120 CAD
Change:	0.000 CAD	0.000 CAD
Change Percent:	0.000	0.000
New Salary:	107,245.440 CAD	8,937.120 CAD

Job Information

Salary Plan: N/A Salary Administration Plan
Grade: N/A
Step: 0

Salary Components

Component	New Amount	Change Amount	Change Percent
UBC Monthly	8,937.120000 CAD Monthly	0.000000 CAD	0.000

6.4.27 As can be seen from these screenshots her annual salary in the 2011-2012 contract year was $102,227.40. On July 1, 2012 her salary increased as a result of a 2.45% General Wage Increase, bringing it to $104,731.92. On July 1, 2013 her salary increased again as a result of a 2.40% General Wage Increase, bringing it to $107,245.44. On July 1, 2014 and again on July 1, 2015 her salary remained at $107,245.44. In addition to these changes in her base academic salary resulting from the two General Wage Increases she would have received a 1% lump sum payment on her June 30 paycheque each year. That lump sum payment does not go into base, as clearly indicated by her compensation history. The lump sum payment is 1% of whatever she was paid during the contract year. It is not included in her compensation history precisely because it is not base salary.

6.4.28 The annual lump-sum payment is certainly salary, and the University correctly treats it as such in their Ability to Pay Submission of July 13, 2015. But in terms of its effect on total compensation it is analogous to a wage impacted benefit, like pension. Every year UBC contributes approximately 10% of eligible member's salaries to their pension plan. That is not equivalent to an annual 10% General Wage Increase.

6.4.29 For UBC to knowingly suggest that the annual non-base lump-sum payment is equivalent to GWI as they did in paragraphs [9], [33] and [36] seems to be an attempt to mislead the Arbitration Board about its GWI proposal.

7. The University's Erroneous Views on Bargaining

7.1 "Final" Proposals

7.1.1 In Paragraph 89 of their August 31, 2015 Submission, the University asserts:

> Of further concern to the University is that several of the Faculty Association's proposals, as described below, were never tabled in bargaining **in the format presented to the Arbitration Board**. The Association's modifications to their proposals are significant and substantive, and the University objects to this attempt to bargain through the interest arbitration process. (emphasis added)

7.1.2 In Paragraph 90, the University asserts:

> Article 11.02(b) of the Agreement clearly states that the parties "shall submit to the Arbitration Board the **items** on which agreement has not been reached." In the University's August 31, 2015 Submission, this provision requires that the parties agree that bargaining has concluded and they have failed to reach agreement, i.e. they have reached impasse. If the parties have further proposals to make, then it seems clear that impasse has not yet been reached. (emphasis added)

7.1.3 Note that Article 11.02(b) refers to **items**, not **proposals**. The Parties had not reached agreement on the following items: Lecturers, Promotion and Tenure, Tenured Assistants, and Librarians. Every proposal made to the Arbitration Board on August 31st was exactly as passed across the table on July 28th. In addition, none of the proposals passed across the table on July 28th and submitted to the Arbitration Board on August 31st represented a significant change in what the Association had been trying to achieve since the first day of bargaining. Our July 28th proposals differed from those previously table either by dropping some proposed language changes, accepting previous University proposed changes, or minor housekeeping and clarification wording changes. Nowhere does the language of the Agreement say that the Parties cannot alter or vary an item.

7.1.4 Is the University suggesting that adding a comma amounts to changing an item? Does correcting a misspelling render a proposal meaningless at arbitration? Does providing greater clarity in a phrase violate some principal of the Labour Board of which the Association is unaware? Does reducing the number of items taken to the Arbitration Board by the University illustrate "bad faith bargaining?" Because that is what the University is trying to assert that the Association did in submitting its final proposals. In a letter to Mr. Roper on May 12, 2015 (found at **Tab 8**, Book of Evidence), Mr. Black outlined the issues between the Parties regarding changes to proposals taken to arbitration, and indicated that if the University was trying to say that the Association was acting in bad faith, the University should take the matter to the Labour Board. The University, of course, did not do so.

7.1.5 In paragraph [103] the University argues that "the specific proposals submitted to Arbitration by the Faculty Association were not tabled in bargaining." This is absolutely

false. The specific proposals were tabled by the Association on July 28, 2015, exactly as they appear in the Association's August 31, 2015 Submission.

7.1.6 The Association regards the meeting on July 28, 2015 as a bargaining session at which we the parties would present their "final" positions that, unless accepted or countered, would be presented to the Arbitration Board. We refer the Board to a letter written by Counsel for the Association to Counsel for the University on July 24, 2015 (**Tab 9**, Book of Evidence). In it, Mr. Black notifies the University that the Association is "desirous of exchanging its final proposals with the University's final proposals." Mr. Black also stated

> As we have previously stated, following the exchange of final proposals, if either party feels that there is an opportunity or a need for further discussion, or bargaining, which could result in a possible agreement on any of the proposals, the Faculty Association is more than willing to engage in such activity or dialogue.

7.1.7 The University, given ample opportunity and notice to continue the dialogue, closed the door, and instead complains dramatically to the Arbitration Board about minor changes the Faculty Association made to its proposals for arbitration. We submit that the University would have made better use of its time by meeting with the Association further, to see if differences might have been resolved, rather than relying on the Arbitration Board to hear their grievances about proposal writing. The Association submits that this behaviour by the University is damaging to the relationship, and serves no useful purpose.

7.1.8 This behaviour was particularly disturbing to the Association, because arbitral rulings demonstrate that the Parties can continue to negotiate up to, and even during the arbitration, in fact up to decision time.

7.1.9 In ***Labourers International Union of North America, Local 183 v Heavy Construction Assn. of Toronto,* [2013] OLAA 16**, the arbitrator was appointed to determine the new collective agreement between the Employer Association and the Union. Two days after the hearing, the Employer's Association filed a submission informing the arbitrator that the parties had just negotiated an issue in dispute at interest arbitration. The Union opposed the filing of the submission and argued that the arbitrator should not take into account a settlement that was not yet ratified. The arbitrator, in determining that he would include the new information at interest arbitration, found that all available evidence of all relevant settlements should be included:

> …I would note that it is common for parties to an interest arbitration to file evidence of new settlements and awards **up to the time a decision is made**. In my view that is entirely appropriate. In any interest arbitration, it is important to have any and all available evidence of all relevant settlements for the time period under consideration, whether achieved before or after the hearing. **If such evidence is not disclosed to the arbitrator, the parties risk a result that cannot replicate or reflect what the parties would be likely to achieve in collective bargaining on their own.** I therefore have considered the recent sewer and watermain settlement along with all the other evidence submitted in this matter. The fact that the settlement has not yet been ratified does diminish its evidentiary value but it does provide some evidence of where the Union is prepared to reach agreement. (para 17).

(Book of Authorities, **Tab 24**) (emphasis added)

7.1.10 There is nothing in the January 30, 2015 MOA that states bargaining was over. The MOA simply states that the Parties have thus far settled some issues, dropped some issues, and had agreed to take other monetary and language items to arbitration.

7.1.11 As Arbitrator Larson pointed out recently in **Fortis B.C. Inc. vs IBEW Local 213 (Renewal Collective Agreement Proceedings Grievance) [2014] BCCAAA No.133**

> **58** An interest arbitration is a mere extension of the bargaining that occurred. If the arbitrator is precluded from considering what happened in the negotiations, the arbitration would have to proceed as if there had been no previous bargaining at all as if was the start a new set of negotiations. And it would use the premise that a privilege against disclosure ought to be applied to encourage a settlement that did not happen and to avoid an arbitration that is itself the only means available to resolve the dispute.
>
> **59** The fact is that the overwhelming preponderance of arbitral authority is that evidence of negotiations is admissible in interest arbitration proceedings based primarily upon the replication theory of collective agreement formation. This approach requires the arbitrator to essentially prescribe terms of the collective agreement that mimic what the parties would have done for themselves had the negotiations not broken down. In order to do that, the arbitrator must necessarily take into account the negotiations that precede the arbitration in the absence of which the arbitrator would have no base from which to make the decision. It is an approach that is precisely the opposite of what the Union is arguing in this case which would preclude replication and would have me devise terms of the new collective agreement without reference to the negotiations as if they had never occurred.
>
> **61** Of course, I understand that the reason why the Union is claiming a settlement privilege is precisely to avoid the application of the replication theory as an appropriate basis for determining the substantive economic issues in this case. However, to accept that the privilege exists on that basis would be to permit the result to drive the law. However, as was stated by arbitrator Weiler, replication is to be regarded only as a general presumption and that it may be displaced by evidence of changing economic conditions. Moreover, replication is only one factor among many that may be taken into account in arriving at a decision on the appropriate terms to be adopted.
>
> **65** Based on all of the above, I similarly so find. Without referring to any specific documents, the entire bargaining history of negotiations for a new collective agreement following the one that expired January 31, 2013 is admissible as being directly relevant to the issues put to me to determine. No privilege attaches to the evidence of the bargaining history and, even if it did, I find that it was waived by the Union in all the circumstances of this case. (Book of Authorities, **Tab 25**)

7.1.12 The Association did not significantly modify its proposals, it did not alter the intent, meaning or purpose of the proposal, and it has the right to produce evidence showing just that.

*7.2 **Proposals that UBC claims are Significantly Modified***

Language on General Wage Increase

7.2.1 In paragraph 50, the University states "For example the University does not know what the Association intends by 'base academic salary,' or whether this new proposal expands entitlement to increases beyond those who were continuing members of the bargaining unit on June 30 of a given year.

7.2.2 The Association would like to draw the Board's attention to the salary proposals of the two parties:

7.2.3 The Faculty Association's proposal (Tab H of the University's August 31, 2015 Submission) is:

> 1. Effective July 1, 2014:
> a) Each bargaining unit member shall receive a general salary increase of 3% to his or her **base academic salary** of June 30, 2014;
> b) The minimum salary scale for Sessional Lecturers (p. 41) will be increased by 3%.
> c) The minimum salary scale for General Librarians (p. 40) will be increased by 3%.
>
> 2. Effective July 1, 2015:
> d) Each bargaining unit member shall receive a general salary increase of 3% to his or her **base academic salary** of June 30, 2015;
> e) The minimum salary scale for Sessional Lecturers (p. 41) will be increased by 3%.
> f) The minimum salary scale for General Librarians (p. 40) will be increased by 3%.
>
> (emphasis added)

7.2.4 The University's proposal (Tab D of the University's August 31, 2015 Submission) is:

> Effective July 1, 2014:
>
> a) Each bargaining unit member shall receive a general salary increase of 0% to his or her **base academic salary** of June 30, 2014;
> b) The steps of the minimum salary scale for sessional lecturers (p. 45) will be increased by 0%.
>
> Effective July 1, 2015:
>
> a) Each bargaining unit member shall receive a general salary increase of 0.85% to his or her **base academic salary** of June 30, 2015;
> b) The steps of the minimum salary scale for sessional lecturers (p. 45) will be increased by 0.85%;
> c) A retention fund of $500,000 will be put in place to be distributed in accordance with Article 6 of the Agreement on Salaries and Economic Benefits; language of Article 6 to be updated."
>
> (emphasis added)

7.2.5 The Association submits that while the value of the proposals differ the language describing the general salary increase is **identical**. It is disingenuous for the University to argue that

they do not know what the Association means by "base academic salary" when it uses the exact same language in its proposal.

7.2.6 More importantly is the explanation for why the Association changed its language for describing the general salary increase prior to the final bargaining meeting on July 28th. As the Association examined the wording of its salary proposal, and reviewed the wording of the University's proposal, it concluded that the University's wording was better. Consequently the Association adopted it.

Changes to CPI

7.2.7 At Paragraph 49, the University makes the following claims:

> The Association has put forward wording changes in its salary proposal that were not provided to the University in collective bargaining. **The Association is proposing modifications to the language as to who is entitled to salary increases and to CPI, merit, and PSA.** (emphasis added)

7.2.8 The Association has made absolutely no proposal for changes in language regarding eligibility for CPI, merit, and PSA. The University's statement is simply not truthful. The only "modification" in Proposal 3 is housekeeping. The sentence currently in the Collective Agreement is: "Each continuing member of the bargaining unit shall be considered for a merit award, taking into consideration the criteria set out in Article 4 of Part 4: *Conditions of Appointment for Faculty,* namely teaching, scholarly activity, and service to the University and to the community..." During bargaining the Parties agreed to add a clause between 4.03 and 4.04 defining educational leadership duties. Consequently the list in this proposal needed updating. This housekeeping change as a result of agreements made at the table was reflected in the Associations proposal at the July 28th meeting. The University is well aware of this.

Workload

7.2.9 The University objects to the Association's workload proposal passed across the table on July 28th and subsequently presented to the Arbitration Board because it dropped one of the three proposals that had previously been put on the table under the general heading of "Workload". The Association has no idea why the University would object to the Association dropping one of its proposals. It is disingenuous for the University to argue that it would have somehow acted differently with workload if only the two items remaining had been presented to it at the bargaining table. If the University's only objection at the bargaining table was that there were three workload items left, and they only wanted agree to two, why did it not simply state that? The Association had the right to pare down its proposal to include only what was most important to achieve in this round of bargaining. The Association understands the need and the importance to prioritize when it makes final proposals that, if not accepted, will be before the Board.

Proposals 12 and 13

7.2.10 Although the University refers to the Associations proposals 12 and 13 as "modified proposals" it does not explain how those proposals were modified.

Proposal 18

7.2.11 The University refers to the Association's proposal 18 as a "modified proposal." The objection to trivial wording changes in Proposal 18 is almost mystifying.

7.2.12 Regarding the anonymous comments proposal, in the earlier version the term used was "teaching evaluations." Upon discussion, the Association realized that the term for teaching evaluations on the two campuses is different, and sought to be clearer in the wording. SEOT (student evaluation of teaching) is the term for the Vancouver campus. TEQ (Teacher Evaluation Questionnaire) is the term for the Okanagan campus. This was a trivial change in words in an attempt to be clearer. In reading over the proposal before preparing it for final exchange with the University, the Association realized that without the word "solicited," if the proposal were accepted, the University might later take the position that the SEOT and the TEQ are solicited. Nonetheless, they contain anonymous comments. The University had to be aware of this, and it represents no material difference from what was presented in earlier proposals.

7.2.13 Regarding the modification of Article 5.10(c) to read that "members of the DAC shall serve for specified and staggered terms," the University is quite correct in saying that the proposal on July 28th was a counter to a previous University proposal which did incorporate that language in its proposal. In fact, given the discussions between the parties in previous bargaining sessions the Association fully expected the University to accept our counter proposal, which would have obviated the need for the Board to consider it. The Association does not understand why the University objects to a counter proposal that moves the position of the Association closer to the position of the University.

7.2.14 The Association understands that the University was disinclined to bargain with the Association after January, and prefers to pretend that the meeting on July 28th was not a bargaining session despite both clear written and verbal indications from the Association that we regarded it as such and would welcome any counter proposals that might move the parties closer to resolution.

7.2.15 However, it is disingenuous of the University to suggest that it did not have an opportunity to consider or discuss the Association's proposals with us. It chose not to consider or discuss the Association's proposals further. We remind the Board again of what Mr. Black said, in writing, about the meeting on July 28th. "As we have previously stated, following the exchange of final proposals, if either party feels that there is an opportunity or a need for further discussion, or bargaining, which could result in a possible agreement on any of the proposals, the Faculty Association is more than willing to engage in such activity or dialogue." (Tab9, Book of Evidence)

8. Faculty Association's Non-GWI Proposals

8.1 *The University's Costing of Non-GWI Proposals*

8.1.1 The University, in its August 31, 2015 Submission, submitted a costing of all of the Association's non-language proposals, as well as the impact that a GWI would have on other aspects of benefits. Its analysis was presented in Tab C of its Submission. We submit that much of that analysis is faulty.

8.1.2 The purpose of "costing" a proposal is to determine the incremental change in total labour costs that result from proposed changes in the Collective Agreement. This is a very different process from the ratio analysis that is performed as part of the ability-to-pay analysis as the latter includes salary and expenditure changes to the GPOF that occur independently of any changes to the Collective Agreement. For example a complete roll-over of an entire Collective Agreement has no "cost" by definition, since no changes to the Agreement are being proposed. However, the ratio of salaries to expenditures can, and does, change as a result of changes that are independent of any changes to the Collective Agreement.

8.1.3 In a normal costing, the volume of service provided, FTE employee totals, employee distribution across classifications, and employee seniority are treated as constant unless specific changes in the Collective Agreement language has been proposed that would affect any of these variables. Each proposed change in the Collective Agreement is costed on an incremental annualized end cost basis in terms of the effect that the proposed change has on total labour costs (wages, and both wage impacted and non-wage impacted benefits). The University is well aware of this as they must present a costing of their proposals to PSEC on exactly that basis, as described in the *Employers Guide to the Mandate*. (**Tab 10** of the Book of Evidence).

8.1.4 The analysis in Tab C of the University's August 31, 2015 Submission is not a costing of the proposals as it includes changes in total labour costs that occur **independently** of any proposed changes to the Collective Agreement. In addition, some of the costs that are appropriately included, are incorrectly calculated.

8.1.5 In addition Tab C uses the "operating fund method" and the "Extension of Appendix B method." Those methods are only appropriate to the ratio analysis used as part of the ability-to-pay analysis. Costing is performed on a total labour cost basis. Total salaries, not just those in the Operating Fund, should be used for the analysis.

8.1.6 **Table 18** contains the proper costing of the Association's proposals, with notes explaining the errors in the University's "costing."

Table 18. Costing of the Proposals (Incremental, Annualized End Cost)

		Note	University's Proposal			UBCFA Proposal	
		(1)	Year 1	Year 2		Year 1	Year 2
Salaries							
	GWI + Retention	(2)	0	3,988,392		11,627,974	11,976,813
	PTR, net of turnover savings	(3)	0	0		0	0
	Minimum scale for 12 month Lecturers	(4)	0	0		103,537	3,106
	Unified minimum salary scale for Sessional Lecturers	(5)	0	0		0	580,000
	1% lump sum payment	(6)	0	39,884		117,315	125,599
	Total salary cost		0	4,028,276		11,848,826	12,685,519
Benefits							
	Wage impacted benefits on GWI	(7)	0	388,326		1,132,246	1,166,673
	Wage impacted benefits on PTR	(3)	0	0		0	0
	Wage impacted benefits on Minimum salary scale for 12 month Lecturers	(7)	0	0		9,981	299
	Wage impacted benefits on Unified minimum salary scale for Sessional Lecturers	(7)	0	0		0	55,912
	Professional development reimbursement	(8)	0	0		1,872,804	0
	Pension benefits for sessionals	(9)	0	0		0	0
	Vision care	(10)	75,271	0		225,813	0
	Tuition waiver for spouse	(11)	0	0		0	34,311
	Pre-adoptive leave	(12)	0	0		0	0
	Total benefits cost		75,271	388,326		3,240,844	1,257,195
Total Cost of the Proposal			**75,271**	**4,416,602**		**15,089,670**	**13,942,714**

Notes:

(1) This costing is on an incremental contract year end cost basis. Year 2 costs are incremental over Year 1 costs. So total costs for Year 2 would be the aggregation of Year 1 and Year 2 costs. Costs incurred at any point during the year, even on the last day of the contract year, are fully annualized. This differs from the fiscal year actual cost basis used in the ratio analysis.

(2) From Tab 5.3 and Tab 5.7 in UBC's ability to pay July 13, 2015 Submission total 2013/2014 salaries for non-sessional and sessional members of the bargaining unit are taken to be $372,655,168, and $14,943,966 respectively. The University's retention fund proposal is $500,000. To the extent that these numbers include employees that are not members of the bargaining unit they are overstated.

(3) In costing proposals increments (PTR) do not enter into the costing because changes to the salary base caused by increments are not due to changes in the Collective Agreement, but due to changes in demographics of the bargaining unit, which are treated as unchanging for the purposes of costing an agreement.

(4) The University's estimate of the Year 1 costs of the minimum salary for Lecturers is plausible. However, the incremental costs in Year 2 should be 3% of the incremental costs in Year 1. The University has made the same proposal for a minimum salary of Lecturers as the Association (as part of the University's sessional/lecturer language proposal). However, since they have asked the Board not to award any of their language proposals it is treated as $0 in costing the University's proposal.

(5) The unified salary scale proposal will, if awarded, come into effect at the end of the second contract year and have virtually no actual cost in the fiscal year. However, because costing is on an annualized end cost basis the full cost of the proposal is included here, as if it was retroactive to July 1, 2015. The University's cost calculation of $2,361,811 is wrong (see below).

(6) The lump sum payment is 1% of salary. The incremental cost of the lump-sum payment is 1% of the change in salary. UBC appears to be treating the lump sum payment as if it was a new proposal, in which case the full cost would be incremental in Year 1, but only the change in the cost would be incremental in Year 2. This is wrong. The lump sum payment is not a new proposal and neither party is proposing to change it, thus only the change in the payment between the base year and Year 1 is incremental in year 1, and only the change in the cost between Year 1 and Year 2 is incremental in Year 2.

(7) Wage impacted benefits are calculated as 9.64% of the related incremental salary amounts, as in the University's Tab C in its August 31, 2015 Submission.

(8) The Association accepts the University's estimate in Tab C as plausible. The proposal is retroactive to July 1, 2014 and thus is an incremental cost in Year 1. Professional Development is not a wage impacted benefit so there is no incremental cost in Year 2.

(9) Neither the University nor the Association has made a proposal to change Sessional pensions. There can be no costs associated with a proposal that does not exist.

(10) The University has estimated the cost of the Association's proposal (to raise the 24 month limit of vision care reimbursement from $250 to $400) to be $225,813. The Association views this estimate as plausible. However, the University has also proposed an increase in vision care from $250 to $300. Consequently the incremental cost of the University's proposal is one-third the incremental cost of the Association's proposal. The proposals are retroactive to July 1, 2014 and thus are an incremental cost in Year 1 but, since vision care is not a wage impacted benefit, incurs no incremental cost in Year 2.

(11) The University has made an estimate of the cost of allowing faculty to transfer their tuition waiver to their spouses based on their experience with the AAPS employee group at UBC, who already have this benefit. It is based on an estimated total cost of $40,887 for the entire AAPS bargaining unit, or $11.01 per member. For the purposes of costing the Association is willing to accept this estimate, but the Association maintains its position that, since fee paying students cannot be displaced, the actual cost is zero.

(12) Neither the University nor the Association has made a proposal on pre-adoptive leave. There can be no costs associated with a proposal that does not exist.

8.1.7 There are four aspects to the University's errors in Tab C that deserve additional comment because they represent calculations that the University knew, or reasonably ought to have known, were incorrect.

a) First, the estimate of $2.4M as the annual cost of the single sessional scale is completely inconsistent with UBC's estimated cost of $800K four years earlier, in light of the reduction in the amount of work performed by Sessionals. It is also inconsistent with UBC's estimated cost of a much more expensive proposal in 2012. UBC knew, or should have known, that costing this proposal at three times the costing of the same proposal in 2010 and noticeably higher than a much more expensive proposal in 2012 could not possibly be correct.

b) Second, the University attempted to cost the end of year lump-sum payment as if it was a new proposal in the first year. UBC knows, or reasonably ought to know that the end of year lump-sum payment has been in place for many years and, as in Year 2, only the incremental cost, if any, should be applied in Year 1.

c) Third, UBC knows, or reasonably ought to know, that increments like PTR do not enter into an incremental costing of bargaining proposals because UBC is obliged to provide a costing of its proposals to PSEC and this is explicitly explained in. An excerpt of PSEC's *Employer's Guide to the Mandate (2012)* that outlines the Key Costing Principles. (**Tab 10** of the Book of Documents).

d) Fourth, UBC has costed two benefits that the Association has not proposed. The Association has not brought any proposals related to Sessional pensions to the Arbitration Board, nor did it put forth any proposals at any time during bargaining on pre-adoptive leave.

8.1.8 Finally, the Association noted that, while this type of incremental proposal cost analysis is the standard way to measure ability to pay in the private sector, it has no relevance here in that context. Ability to pay for the purposes of this arbitration is defined in terms of *a reasonable balance between salaries and expenditures*, not in terms of incremental labour costs. Nonetheless the Association points out that incremental labour costs of between 15 and 17 million dollars do not represent any significant hardship on an institution with annual revenues of 2 billion dollars.

8.1.9 In its Tab C the University has estimated the cost of a single sessional salary scale as $2,361,811. The University knows, or reasonably ought to know, that this estimate cannot be close to accurate. In 2010 the University estimated the cost as $800,000, a number the Association accepted as plausible. Since then Sessionals have had general wage increases of

4.85% over four years. However, the amount of work being done by Sessionals has declined by a greater percentage. This is reflected in Tab 5.7 of the University's July 13, 2015 Ability to Pay Submission which notes that during the four year period between FY12 and FY15 total Sessional salaries have fallen by 5%.

8.1.10 It is impossible for the cost of the proposal to have increased during that same period. It is also inconsistent with UBC's estimated cost of a much more expensive proposal in 2012. In 2012 the Association was proposing a single salary scale that was about 7% higher than the (then) Arts Scale. As a result costs would have been incurred in all Faculties, including the Faculty of Arts, which is the largest employer of Sessionals, by a large margin. The proposal the Association is making at this time is simply to define full-time in all Faculties as 9 credits per term, as it currently is in Arts, Science, and most other Faculties. Consequently costs can only be incurred in the few faculties where the definition of full time is either 12 or 15 credits. Applying UBC's estimated increases in 2012 to the sessional salaries in 2014 (but only in Faculties that would be affected) indicates that the cost of this proposal cannot be more than $740,000. UBC has made a cost estimate of this proposal, either by accident or design, that they know must be wildly inaccurate.

8.1.11 The Association was able to confirm the impossibility of the University's costing by calculating the actual total sessional salary payments between July, 2014 and June, 2105 (inclusive) by faculty. These data were provided by the University monthly pursuant to Article 6.07(a) of Part I of the Collective Agreement. The total salaries received by Sessionals during that 12 month period was $15,939,042. Of that, only $5,942,211 was earned by Sessionals in one of the Faculties that would be affected by the single salary scale (i.e., Faculties with a 12 or 15 credit definition of full time). Using case level salary analysis we were able to determine that none of the Sessionals in either the Faculties of Commerce or Management had salaries below the Arts minimum scale, and only 19% of Sessionals in the Faculty of Applied Science had salaries below the Arts minimum scale. Further we were able to determine that in many departments in the Faculty of Education, Sessionals, while generally paid below the Arts Scale, are also paid above the current Education Scale.

8.1.12 Because the salary data the Association receives from the University does not contain information on the number of credits taught it is necessary to compute them from the percent of full time data that is provided by the University. However, that particular variable contains a large number of errors for members in the Faculty of Education, which is where the vast majority of affected members are, so it was only possible to estimate a range. Based on the salary data the Association knew that the true cost would be between $400,000 and $800,000 per year. However, the Association was aware that, based on the University's 2012 costing of a much more expensive proposal the true cost could not possibly be more than $740,000.

8.1.13 The Association asked the University for appointment contract-level data which is necessary to calculate the cost precisely. That data was received on September 22, 2015. It contained 15,236 appointment level cases for all Sessionals who had an active appointment at any time between April 1, 2014 and March 31, 2015 and included their current and historic appointment information. The University noted that "there are also a number of appointments with what seems like a very high value in the Salary Column. In these cases there are multiple rows for one appointment and each row indicates the same salary value. However, each row is one course within the one appointment and the salary is the total salary for all of those courses taught within that one appointment." Because each record

contained an appointment ID number it was relatively easy to identify the rows that represented multiple courses within each appointment and sum the credits without summing the salaries. It is presumed that UBC performed the same correction as it was they who alerted us to the problem.

8.1.14 The Association identified 979 distinct appointments in Faculties that are potentially affected by the single salary scale and that included one or more months during FY15. Because these are distinct appointments, and most Sessionals hold more than one distinct appointment each year, the number of distinct appointments is far greater than the number of Sessionals in the affected Faculties. In cases where the appointment either began in FY14 and ended in FY15, or began in FY15 and ended in FY16, only the salary paid during the months contained in FY15 was included. For example, a common type of appointment was one that started on January 1, 2014 and ended on April 31, 2014. In this case only one of the four months of the appointment occurred during FY15 and only one month's salary was included. A similarly common type of appointment was one that started on January 1, 2015 and ended on April 31, 2015. In this case three of the four months of the appointment occurred during FY15 and were included. For appointments that both started and concluded during FY15 (which was most appointments starting in Sept 2014 and appointments covering the summer term in 2014) all months were included.

8.1.15 Simply using only those appointments that started during FY15 and assuming the overlap between fiscal years would "cancel out" undoubtedly would have produced a very similar number.

8.1.16 Once the total number of distinct appointments containing at least some time during FY15 in the affected Faculties was obtained the Association calculated the difference between the proposed minimum salary per credit, given the step the sessional was on, and the actual salary per credit, for each distinct appointment, multiplied by the number of credits contained in each appointment. If negative, the difference was set to 0. The differences were summed over all appointments. The resulting number is $579,941.91.

8.1.17 By costing proposals that were not made, misapplying standard costing procedures of which it is well aware, and providing cost estimates that it knows, or should know, cannot possibly be true, the University has made it appear that the changes in benefits and language proposed by the Association are much more expensive than they truly are.

8.1.18 In paragraph [62] the University claims "[T]hese proposals all have cost implications for the University." This is true. The end-cost of the Association's benefits and language proposals is $3M more than the end cost of the University's proposals in Year 1 and $700,000 more in Year 2. In paragraph [63] the University seems to suggest that "[B]ecause the University's salary proposal is at its ability to pay," there should be an offset of salary increases for benefit improvements. The Association objects to that conclusion. The University is not at its ability to pay under the reasonable balance definition and if the Board awards a General Wage Increase that would be at the limit of the reasonable balance that would not prevent it from awarding non-wage benefits with cost implications. The reasonable balance definition only refers to wages, not benefits. The test for benefits is 11.02(e)(iv), and while the Association does not expect the Board to ignore the cost of its benefit and language proposals it does expect the Board to apply the appropriate test, not the reasonable balance test that applies to wages. The Association submits that benefits and language proposals in

the range of $3M is not beyond the ability to pay of a University with $2B in annual revenues in the normal usage of that term.

8.2 ***Should the Arbitration Board Award non-GWI Proposals?***

8.2.1 The University objects to the Arbitration Board considering any of the Association's language proposals on two bases:

a. The "narcotic effect" of interest arbitration likely caused negotiations to break down (paragraph 73); and
b. None of the issues raised are of sufficient urgency to warrant an award (paragraph 74).

8.2.2 In respect of the purported "narcotic effect'" we point out that the Parties agreed that it would be better to have the Arbitration Board adjudicate the items put before it. This is evidenced by the Memorandum of Agreement reached on January 31, 2015, (**Tab 1**, August 31, 2015 Book of Evidence) which indicates:

> 2) That **UBCFA may submit** its proposals on Workload (UBCFA #11: Part 1, Article 13); Sessionals/Lecturers (UBCFA #12 and #13) and Promotion and Tenure Processes (UBCFA #18: Part 4, Article 5) **to the Arbitration Board** under Article 11.02(b) of the Collective Agreement.
>
> 3) That **UBC may submit** its proposal on Sessionals/Lecturers (UBC #5), and on tenured Assistant Professors (UBC #6(a): Part 4, Article 2.03(1)) **to the Arbitration Board** under Article 11 .02(b) of the Collective Agreement.
>
> 5) That the Parties agree that **either may submit their proposals** on Part 5: Conditions of Appointment for Librarians **to the Arbitration Board** under Article 11.02(b) of the Collective Agreement.
>
> 6) That **all other proposals** except those relate to term of the agreement (UBCFA#26; UBC #1) and compensation (UBCFA #1, #2, #3, #4, #5, #6, #7, #8, #9, #10; UBC #2, #3) **are withdrawn**;

8.2.3 In respect of the assertion that a lack of urgency weighs against an award in this case, we point out that Arbitrator Taylor in the Previous Award held that at that time, given the lack of urgency, the parties should be "**given another chance to resolve the issues themselves"** (paragraph 133).

8.2.4 Relying on Arbitrator Taylor's judgement, the Association did take another chance to resolve these issues put forth before the Board, and no resolution occurred. Thus, the Association argues that these proposals are not only properly submitted to the Arbitration Board, but that they should be adjudicated by the Board.

8.2.5 It is the Faculty Association's respectful submission that the reasons set out above for which the Arbitration Board decided not to address non-monetary items do not exist in this case and therefore should not form the basis for declining to address non-monetary issues. Since the 2013 interest arbitration, changes to both labour jurisprudence and the parties' collective bargaining relationship require interest arbitration to address <u>all</u> issues

unsettled, including non-monetary proposals. In our opinion these changes create an obvious, clear and compelling reason to do so.

8.2.6 Just this year, the Supreme Court of Canada in ***Saskatchewan Federation of Labour v Saskatchewan***, 2015 SCC 4 (***SFL***), found that the right to strike is a constitutional right for all workers in Canada, regardless of whether they work in the private or public sector. The case dealt with *Charter* challenges to two pieces of legislation, with the primary issue around the government broadening the scope of essential service employees, to the point that the legislation effectively took away the right to strike of almost all public sector workers in Saskatchewan. The majority highlighted the fundamental power imbalance that exists between employers and employees and the need to address this imbalance through substantive equality:

> In their dissent, my colleagues suggest that s. 2(d) should not protect strike activity as part of a right to a meaningful process of collective bargaining because "true workplace justice looks at the interests of all implicated parties" (para. 125), including employers. In essentially attributing equivalence between the power of employees and employers, this reasoning, with respect, turns labour relations on its head, and ignores the fundamental power imbalance which the entire history of modern labour legislation has been scrupulously devoted to rectifying. It drives us inevitably to Anatole France's aphoristic fallacy: "The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread." (para 56)

8.2.7 The Faculty Association's non-monetary proposals are made up of issues that exhibit both a demonstrated need and are significant to the Union and its members. The issues included in the proposals have significant effects on day to day workplace interest of members, with some issues, such as workload, being as significant as monetary proposals.

8.2.8 The give and take of collective bargaining, to which the 2013 interest arbitration award left non-monetary proposals, presumes that the power imbalance between the employer and the employee has been ameliorated by the threat of a lawful strike or by the presence of an alternative dispute resolution mechanism. When both don't exist, the give and take of collective bargaining is unfairly skewed in the employer's favor.

8.2.9 When the Faculty Association is unable to come to an agreement with the University on a non-monetary proposal, which can be an issue as vital as a monetary proposal, the Faculty Association, according to the 2013 Interest Arbitration is left without both the ability to strike and without the ability to have matters determined by a meaningful alternative dispute resolution mechanism. Both of which have been declared by the Supreme Court of Canada to be a constitutionally protected collective bargaining right under section 2(d) of the Charter.

8.2.10 The Association respectfully submits that the recent broadening of constitutional protection for workers' rights under section 2(d), by affirming a constitutional right to strike, is a clear and compelling reason for addressing non-monetary proposals. The recent jurisprudence impacts the case at hand by enhancing the duty of the alternative dispute resolution mechanism in place of the freedom to strike, which is in this case interest arbitration. In exercising its Charter protected right to strike, the Faculty Association has the

constitutional right to engage in a meaningful alternative dispute resolution mechanism, which considers all matters that are unsettled, both monetary and non-monetary. Interest Arbitration that fails to do so is not a meaningful exercise of the constitutional right to strike and thereby violates the collective bargaining rights protected under section 2(d) of the Charter.

8.3 ***Proposal 11: Workload Part 1, Article 13***

Note: all subsequent references to paragraphs of the University's can be found in the University's August 31, 2015 Submission

8.3.1 The University indicates that it is unwilling to fetter its management rights to determine workload to a greater degree than currently required by the Collective Agreement (paragraph 107).

8.3.2 The Association states in response that workload is a fundamental aspect of the terms and conditions of employment for any union. The workload provisions of the Collective Agreement are minimal. There are no prescribed hours of work, prescribed workday, no provision for overtime or time in lieu, in fact none of the standard provisions that exist in every other Collective Agreement at the University. For example, Article 28.02(A) in the Collective Agreement between UBC and CUPE 2950 specifies

> The normal hours of work for all full-time employees shall be thirty-five (35) hours per week, or seventy (70) hours per two consecutive weeks. All employees are entitled to thirty-two (32) consecutive hours free from work each week, unless overtime rates are paid, as per Article 29.02.

8.3.3 This type of language is not typical in faculty agreements and the Association does not seek it. But it is simply wrong to suggest that the simple, industry standard language the Association proposes would impose an excessive restriction on management rights. Should the Board award the language the Association seeks the UBCFA-UBC Collective Agreement will still have extraordinarily flexible workload provisions.

8.3.4 The University also submits that "Any new workload language should be the subject of negotiations between the parties in the next round of bargaining" (paragraph 107). The fallacy of that statement is evident in the previous sentence where the University says "The University is unwilling to fetter these rights to a greater degree than already exists under the Agreement." The University has no intention of bargaining any further fetters. The Association has brought these crucial proposals to the table repeatedly and the University has made it clear that it is unwilling to provide the Association with the same type of language that other faculty Collective Agreements have.

8.3.5 The University also argues in paragraph [108] the "language proposed by the Faculty Association would only serve to reduce flexibility and collegiality and instead create prescriptive rules that are more in keeping with an industrial model of workload management than a university." The Association wishes to reiterate that the proposals the Faculty Association makes are standard language at most Canadian Universities, and are also modelled largely along the lines of the University of Toronto.

8.4 ***Workload, Proposal 11, Article 13.04 -Non-Teaching Term***

8.4.1 The University argues in paragraph [111] and paragraph [112] that the language is "unworkable" and could bring some programs "to a halt." This is simply untrue. The non-teaching term is standard across Canada and exists in almost every other Collective Agreement in Canada, including that at the University of Toronto. It is absolutely not difficult to arrange teaching schedules so that one of the three annual terms is free of teaching.

8.4.2 The term free of teaching is such the norm in Canada, and had been at UBC, that the Association never felt it necessary by to have such language in the Collective Agreement. However, recent developments have created a clear and compelling reason for this change now. The evolution of the Educational Leadership stream has created conflict within UBC management about the role of such faculty. At the bargaining table the Association was repeatedly assured that members in this stream would not be treated as "teaching machines," and that they would be given adequate time to perform their educational leadership duties. However, we have observed, and grieved, Deans directing Heads to assign members in the educational leadership stream teaching in all three terms, not because of program needs, but simply because they do not accept the new model of the Educational Leadership stream in which faculty face tenure and promotion criteria that requires a level of demonstrable scholarly output that can only be achieved with a traditional term without teaching.

8.5 ***Workload, Proposal 11, Article 13.05- Fixed Maximum Teaching Load for Lecturers***

8.5.1 In paragraph [119] the University states that "the concept of "credit hours" is a metric tailored to students and not to the time or the intensity of the work involved for faculty. Setting a maximum workload based on a student-focused metric is problematic." The Association points out that the University already uses credits to define full-time workloads for the other contract faculty classification: Sessional Lecturers. Defining a maximum teaching load in terms of credits, or in terms of three credit courses, is standard in any university. The Association has not sought a maximum teaching load for faculty in tenurable classifications, but we do seek it for Lecturers, who are contract faculty but who, unlike Sessional Lecturers do not have a specified course load. The reality of the current situation is that faculty hired into the Lecturer classification are having the amount of work they are expected to perform increase without any increase in compensation, something that cannot occur with Sessional Lecturers. This is simply inequitable and unfair.

8.5.2 The University argues, in paragraph [121] that due to "the nature of the work and learning in the different disciplines, a full-time workload is necessarily constituted differently between the faculties, i.e. nine credits per term is a full-time load in the Faculty of Arts, but it is more than a full-time load in the Faculty of Law (6 credits). It would be unfair to both faculty and students if all faculties were forced to provide the same number of credits per term to all course instructors." The Association's proposal is to provide a maximum workload, not to force all faculties to provide the same number of credits per term to all course instructors. The University is arguing against a proposal the Association did not make.

8.5.3 In paragraph [122] the University argues that "faculties such as Applied Science and Education, where a full-time load is 15 credits per term, would face significant financial

burdens if they were forced to reduce the credits required for all Lecturers, continue to pay them at the same rate, and hire new faculty to fill all of the vacancies." This is false. There is currently no limit on the number of courses that a Lecturer, once hired, can be assigned, as the University points out in paragraphs [116], [117], and [118]. There are no defined full-time loads or teaching maxima for salaried faculty members. The full-time definitions referred to by the University apply only to Sessional Lecturers, who are paid by the course. In truth the current *de facto* maximum workload for Lecturers is 8 sections per year.

8.5.4 The University submits that the other BC universities should be considered comparators. SFU, UVic, and UNBC all have one free teaching term in their collective agreements.

8.6 ***Right of Reappointment for Lecturers (Proposal 13)***

8.6.1 In paragraph [128] the University says: "The Association has proposed changes to both the conditions of employment for Sessional Lecturers and for Lecturers. These two proposals - and the terms and conditions of employment for Sessionals and Lecturers - are inextricably linked and cannot be considered in isolation." The Association disputes this. There is no linkage between the two proposals. The Association believes each proposal is deserving of being awarded by the Board on its own merits but the Board may award either proposal without any ripple effects on the other. The Association notes that provisions pertaining to Lecturers and Sessionals exist in different parts of the Agreement and each stands on their own without reliance on the other.

8.6.2 In paragraph [131] the University asserts that the "issues are simply too complex to be determined by adjudication." The Association disagrees. The issue is simple, and the proposed language is simple, and workable. The issue is that Lecturers are appointed on a series of one-year contracts without any right to reappointment, or even a right to notice of non-renewal of contracts. The proposed language is identical to language that currently applies to Sessional Lecturers. (CA, Part 7, Article 2.06 (p.115); CA, Part 7, Article 3.01 (p.115); CA, Part 7, Article 10.01 (p.115)). Thus, the Association merely asks Lecturers be given a accorded a right that has already been granted to all other members of the bargaining unit.

8.7 ***Right of First Refusal for Sessional Lecturers (Proposal 12)***

8.7.1 In paragraphs [136] the University says: "Overall, the University is seeking to reduce its current reliance on temporary contract faculty who have more tenuous connections to the University and to provide those faculty members with better jobs, albeit potentially for fewer individuals." The Association notes that its proposal does not in any way alter the University's ability to reduce its current reliance on temporary contract faculty. The proposal simply deals with the question of assignment of whatever work the University does make available to Sessional Lecturers.

8.7.2 In paragraph [139] the University states: "Sessionals are valued members of the University community who help the University maintain its flexibility and ability to provide qualified instructors for all courses." The Association points out that its proposal is that Sessional Lecturers with less than full time appointments should have a right of first refusal for courses for which they are qualified, on a greatest length of service first basis up to full-time. This clearly does not interfere with the University's flexibility and ability to provide qualified instructors for courses.

8.7.3 Also in paragraph [139] the University asserts that Sessional Lecturers "are often not hired based on the standard of excellence." The Association takes exception to this slur on our members and wishes to point out that Sessional Lecturers are subject to far greater assessment of their teaching abilities than any other members of the bargaining unit.

8.7.4 First, if, during or following the completion of a Sessional Faculty Member's initial appointment serious concerns are raised with respect to his/her teaching performance the Department Head, or Delegate, investigates and in his/her discretion, shall determine whether or not to reappoint the Sessional Faculty Member (CA Part 7, Article 7).

8.7.5 Second, a Sessional Faculty Member's entire performance of assignment duties must be evaluated on a regular basis, and his or her teaching performance is evaluated at least annually (teaching evaluations are conducted at the end of every term). The Department Head determines whether performance is of a sufficiently high standard to warrant reappointment. (CA Part 7, Article 8).

8.7.6 Finally, for all Sessional appointments and for reappointment of Sessional Lecturers with appointments of at least 50%, their reappointment is subject to a consultative process. Under the Collective Agreement, the Department Head consults formally at meetings convened for that purpose with eligible members of the Department in order to ascertain their views and to obtain their recommendation concerning the appointment of all Sessional Faculty and the reappointment of Sessional Faculty with appointments of at least 50% of full time. This is by far and away the most rigorous and frequent assessment that any member of the bargaining unit faces.

8.7.7 Nothing in the Association's proposals alters this fact. The Association simply wants to replace the existing "right of first consideration" with a right of first refusal for additional work for which they are qualified.

8.7.8 The Association notes that the University has asked the Arbitration Board to use SFU as one of its comparators, and Sessionals at SFU have the right of first refusal. It can be earned as quickly as having taught a course for 3 consecutive semesters.

8.8 ***Anonymous Student Comments (Proposal 18)***

8.8.1 The University submits that the Association's concerns about the use of anonymous comments as part of tenure and promotions processes are "unwarranted" because of strict privacy procedures in place that limit access to student comments.

8.8.2 The provision the Association wishes to change (CA Part 4, Article 5.06, Departmental Committee: Meetings) explicitly refers to information that is to be considered by a candidate's colleagues on the Departmental Tenure and Promotion Committees. The Association does not seek to restrict access by Deans or Heads.

8.8.3 The University suggests in paragraph [184] and elsewhere that anonymous student comments are not released to members of Departmental Tenure and Promotion Committees. "Where a faculty or department has created questions which request student

comments, those comments are only released to the individuals mandated by the Senate Policy (generally, the faculty member in question and his/her Dean and/or Head) and other individuals with written authorization to obtain them."

8.8.4 In paragraph 180 the University further provides a chart which "describes who has access to which modules of student evaluation" and further states "This depiction is contained in the Senate Policy." The chart in paragraph 180 limits the "access" to each module to individual teachers, Departmental Heads or Designates, or Dean/Head of School or Designate. Only the University Module, which does not contain student comments, can be accessed by any other stakeholder.

8.8.5 After careful review of the Senate policy the Association agrees with the position of the University in paragraphs 180 and 184. Senate policy does limit access to the results of the evaluations in such a way the tenure and promotion committees cannot have access to them.

8.8.6 However, in paragraph 186 the University states: "If there are comments that were not already removed and are of concern to the faculty member, those comments can be expunged from the record before the Head or Dean releases the comments to the Departmental Committee for use in the tenure and promotion process." Thus it appears that some Heads and Deans may be violating Senate Policy about who has access to various modules of the evaluations

8.8.7 The view of the Association is simple. For reasons well explained in our brief we think anonymous student comments should not be used as part of the process leading to tenure and promotion decisions and should not be provided to members' colleagues on Tenure and Promotion committees.

8.9 ***Length of the Agreement (Proposal 26)***

8.9.1 In paragraph [198] the University asserts that a two year agreement does not allow for stability, and does not allow sufficient time for the new language to be put into effect and evaluated by the parties, before a return to the bargaining table. The Association points out that this situation is not much different from the situation in the previous round where the 2012-2014 Agreement was concluded by an Arbitration Award that was rendered well into the second year of the Agreement.

8.9.2 The Association notes again the in the history of the relationship between UBC and UBCFA there has never been a five-year agreement, no Arbitration Board has ever awarded a term greater than one except the 2012-2014 Agreement, where the Parties had agreed on a two-year term and the Arbitrator did not have to make term part of his Award.

8.9.3 The UBC-UBCFA Collective agreement contains unusual provisions governing interest arbitration that require the Arbitration Board to forecast future price and wage inflation, as well as forecasting future developments in the revenues and expenditures of the employer. This is not typical in either public sector or private sector interest arbitrations.

8.9.4 For most public sector arbitrations, ability to pay is not an issue at all for reasons that date back to **McMaster University and McMaster University Faculty Assn**., [1990] O.L.A.A. No. 84, 13 L.A.C. (4th) 199 (Tab 27, Book of Authorities). In that ruling, Arbitrator Shime noted

that "public sector employees should not be required to subsidize the community by accepting substandard wages and working conditions." (Book of Authorities, **Tab 17**, at paragraph 14).

8.9.5 For most private sector arbitrations, although potential changes to revenue may be an issue, ability to pay is determined on the basis of traditional Collective Agreement costing that relies solely on the costs imposed by the proposed changes to the Agreement.

8.9.6 However the provisions contained in Article 11.02(e) require the Arbitration Board to forecast future price and wage inflation, as well as forecasting future developments the expenditures of the employer. It is simply impossible for the Board to forecast some of these things with any accuracy more than one year into the future.

8.9.7 Finally, bargaining is used to solve workplace issues. Putting problems off far into the future could prove damaging to our members. It is rare for Universities to have five-year agreements, and it has never happened at UBC. In 2006, there was a four-year agreement, but that came with significant wage increases and a signing bonus. UVic did settle for a five-year agreement, but they negotiated about an 8.5% wage agreement. It was also a first collective agreement.

Association Proposals Not Discussed in the University August 31, 2015 Submission

8.10 Elimination of Dates Pertaining to the Annual Payment of the Career Advancement Plan (CPI, Merit and PSA) (Proposal 3)

8.10.1 Like any typical Faculty Collective Agreement in Canada the UBCFA-UBC Collective Agreement has provision for seniority based annual increments and, like most major research universities the Agreement also has provision for annual merit based increments. The existing language pertaining both to seniority based and merit based annual increments (CA, Part2, Articles 2.02, pp. 34-35), (CA, Part2, Article 2.04, p. 35-36) and (CA, Part2, Article 2.05. pp. 37-48) contains specific dates for the distribution of this money. For example, Article 2.02 currently reads :

> A sum equal to 1.25% of the
>
> (1) 2011/2012 salaries of continuing members of the bargaining unit shall, effective on July 1, 2012; and
>
> (2) 2012/2013 salaries of continuing members of the bargaining unit shall, effective on July 1, 2013,
>
> be allocated by way of CPI in accordance with the following provision

8.10.2 The Association proposes to eliminate reference to specific years in the language of when CPI, Merit, and PSA increments are paid to ensure that those increments become effective July 1 of each year. The University has not commented on our proposal, nor have they proposed revising the dates to reflect their proposed term of the agreement, as they have done in previous bargaining rounds.

8.10.3 In an exchange of emails between Dr. Langton, Chair of the UBCFA Bargaining Committee and Ms. Mattacheskie, UBC Chief Negotiator, on Monday, September 17, 2015, the University confirmed that it had no intention of eliminating the PTR system.

8.10.4 The Association anticipates the UBC will make a proposal to revise the dates in Articles 2.02, 2.03 and 2.04 in Part 2 of CA (pp. 34-36) to reflect the term of the renewed Collective Agreement, but in the event they do not the Association submits that the Board shall deem them to have done so, given the exchange of emails between Dr. Langton and Ms. Mattacheskie. The Association strongly urges the Board to award our proposal, on which the University has not provided any comment. However, it is crucial that the Board award one of the two competing proposals or it will have inadvertently awarded the University a massive concession that it was not seeking.

8.11 *Dean's Advisory Committee (Proposal 18)*

8.11.1 Part 4, Article 5.10, p. 77 of the Collective Agreement (Review by the Dean) establishes a Dean's Advisory Committee (commonly referred to as "DAC") with whom the Dean shall consult on reappointment, tenure and promotion recommendations. The Faculty Association proposes three modifications to the existing language designed to ensure that the intent of the section is not frustrated by ambiguous language. These proposals are explained in the Association's August 31, 2015 Submission, pg. 74-76.

8.11.2 These proposals are designed to create some standard procedures governing an election process which already exists in the Collective Agreement. These are standard procedures and completely consistent with the purpose of the existing language. Given that the University has raised no specific objections to these proposals the Association urges the Board to award this language.

9. University's Non-GWI Proposals

9.1 *Request to Award No Proposals*

9.1.1 The University argues in paragraph [201] that the Board should award no language proposals at all, not even their own proposals. In paragraph [203] the University describes their proposals as providing this Arbitration Board with the requisite "trade-offs" in the event that it chooses to award all one (or part of) the Faculty Association's non-monetary proposals. The Association submits that the Board is fully able to award non-monetary proposals without having to resort to "trade-offs." Indeed if that were not true the University could frustrate the Board's ability to perform its duties by only including complex and concessionary proposals designed not with the intention of being awarded, but with the intention of making trade-offs impossible. That is precisely what the University has done here by making proposals that it does not want the Board to award.

9.2 *Proposal 7: No Tenured Assistant Professor Part 4, Article 2*

9.2.1 The University proposes to eliminate the rank of tenured Assistant Professor. This is not the first time that it has put this proposal on the table, and the Association has vigorously refused to allow this concession.

9.2.2 Currently, at the end of a pre-tenured member's appointment as an Assistant Professor he or she may be a) tenured and promoted to Associate Professor b) tenured but not promoted, or c) denied tenure. The University proposes to eliminate the option of being tenured but not promoted.

9.2.3 The University has conflated the purpose of tenure with the purpose of promotion. In paragraph [222] the University argues that too much is at risk when individuals are tenured as Assistant Professors. The University does not explain this risk.

9.2.4 To quote from the forward to the SAC Guide to Reappointment, Promotion and Tenure Procedures at UBC, signed by both Provosts:

> Tenure is not automatic and is only granted after a faculty member's record has been vigorously reviewed by his or her peers, Head, Dean and the President. A vigorous assessment is warranted given the significant publicly funded support a tenured faculty member receives over the course of a long career and the role they are expected to play in shaping the University for students in the future."

9.2.5 Further, at Tab 4 of the University's August 31, 2015 Book of Evidence, the University indicates that there are 27 individuals who have been tenured as Assistant Professors since 2004/2005 and noted that of these 27 faculty members, only 6 have been successful at achieving promotion to the rank of Associate Professor.

9.2.6 First, as individuals who were tenured as Assistants in 2013/2014 would be having the first periodic review for promotion this year, or their first opportunity to be reviewed for promotion to Associate Professor, so it is inappropriate to include the last two years in the table as evidence that faculty members do not get promoted out of that rank. Omitting those individuals from the analysis, reduces the total number of tenured Assistants in that group from 27 to 19.

9.2.7 Second, the Association's records show that two other faculty members have successfully been promoted to Associate Professor who are not listed in the University's table and a third faculty member who was tenured as an Assistant has since left the University. This reduces the number to 16 who appear to be slow to get promoted to Associate Professor.

9.2.8 The University has presented the Arbitration Board with incomplete information as evidence to support its proposal. The additional information from the Association shows that there is no harm done to the University in granting tenure as an Assistant Professor.

9.2.9 Assessment of tenure is not "less rigorous" than assessment of promotion. It is rigorous, and rigorous precisely because the University understands that it is making a commitment of "millions of dollars of public money." Indeed not only does the University consider the significant publicly funded support a tenured member receives, but also the role they are expected to play in shaping the University for students in the future.

9.2.10 There is no clear and compelling evidence of any harm tenured Assistant Professors bring to the achievement of the educational mission of the University. In those circumstances, the Arbitration Board should not award the removal of tenured Assistants from the Collective Agreement.

9.3 ***Proposal 9: Conditions of Appointment for Librarians Part 5, Article 2***

9.3.1 The University proposes a six year confirmation process in place of the current three year process by implementing a second probationary appointment period.

9.3.2 Three years is already a long probationary period, and any increase in probationary periods is always a very significant concession, let alone an increase of three years. This is far too concessionary and provocative a proposal for an Arbitration Board to award.

9.3.3 The University provides no evidence for the suggestion that a six year probation is "typical." While there are some universities with six year probationary periods those are not typical. One to three years is far more typical and many universities have probationary periods of one or two years, including:

a. Simon Fraser University (1 year);
b. the University of Victoria (2 years);
c. the University of Northern British Columbia (2 years); and
d. the University of Toronto (" not be less than one (1) year and not more than two (2) years").

9.3.4 In paragraph [230] the University contends that "three years does not provide sufficient time for feedback or a sufficient time for feedback or a sufficient opportunity for a struggling Librarian to improve his or her performance in order to address concerns and meet the standard for confirmation." The Association sees no evidence of this. On the contrary, very few Librarians fail to meet the standard for confirmation. Certainly the rate at which Librarians fail to achieve confirmation is not higher than the rate at which faculty fail to achieve tenure.

9.4 ***Proposal 9: LOU #2: Term Administrative Appointments for New Heads***

9.4.1 In paragraph [232] the University claims that it seeks to renew the Letter of Understanding #2 with regard to Term Administrative Appointments for New Heads in the Library. The Association takes strong exception to this characterization of their proposal. The University's proposed Letter is identical to the one they submitted to the Arbitration Board in the 2013 Arbitration, which the Arbitrator did not award. Its inclusion in the printed copy of the Agreement was, to put it charitably, an error.

9.4.2 The LOU, with the language printed in error, expired on June 30, 2014. The Association reiterates its position that an LOU on such a complex matter, that expires at the end of a Collective Agreement (which the Association believes should be June 30, 2016) requires further discussion between the Parties and should not be awarded by an Arbitration Board. The very fact that it is proposed as an LOU indicates that it is a short-term or transitional matter that should be worked out between the Parties.

9.5 ***Proposal 5: Sessional Lecturers and Lecturers Parts 2, 4, 7***

9.5.1 The University has made a highly complex proposal that represents a massive concession. As the Association pointed out in its August 31, 2015 Submission [9.01], the effect of the proposal would be to:

a) eliminate completely the classification of Sessional Lecturer (a classification in which approximately 1,000 different members are employed each year),

b) remove Part 7 of the Collective Agreement in its entirety,

c) create two new classifications: Contingent Faculty and Graduate Student Lecturers,

d) redefine Lecturers from the current "12 months or less" to holders of 3-year appointments,

e) provide a right of reappointment for three-year Lecturers,

f) introduce a new mechanism for paying contract academic staff based on departmental workload allocations, and

g) specify that the vast majority of Sessional Lecturers (those not covered by Part 7, Article 5), who currently have a right to reappointment, will lose all rights to work and may only apply for Lecturer appointments (with probation).

9.5.2 The Association notes that the transitional memorandum the University proposes would only guarantee no reductions in the per course salary of Sessionals who apply for, and are selected to fill, Lecturer positions. There is no mechanism to protect the per-course salaries of Lecturers who are not former Sessionals, and there is no mechanism to protect the per-course salaries of Contingent Faculty. The Association submits that the purpose of this proposal is to give the University the ability to lay off current sessionals and significantly reduce the per-course salaries of future employees doing what is now sessional work.

9.5.3 Because the University's proposal is highly complex it might not be apparent at first glance what a major concession they are seeking. The Association also wishes to note that this proposal is not necessary to achieve the University's stated objectives. The University currently has the ability to convert Sessional work to Lecture work under the Collective Agreement, and indeed it has been doing so for some time. If the University wants to provide Lecturers with a right of reappointment they can simply accept the Association's proposal. However, what the University is proposing is far more insidious than that.

9.5.4 In 2.03 of the University's proposal, it states that "The University shall make every reasonable effort to create full-time positions for Lecturers out of remaining available courses to be taught. Normally, part time Lecturer positions will not be less than 50% of a full-time equivalent (FTE). The University will make every reasonable attempt to avoid appointments of less than 50% FTE by offering additional teaching assignments, including reasonable overload assignments, to qualified and available faculty members." The proposed contract language does not make it clear what is meant by "remaining available courses" but paragraph [238] provides a clue "Heads were asked to comment on the ability to bundle courses currently taught by Sessionals into full-time Lecturer positions and estimate how many remaining courses would be leftover following this bundling exercise."

9.5.5 The Association infers that the term "remaining available courses" means course that remain after Sessionals, as a classification, are made to disappear. Currently Lecturers get course assignments in priority to Sessionals. There is nothing to prevent the University from hiring more Lecturers and assigning them courses that would otherwise be taught by Sessionals. Indeed, the University has been proceeding along those lines for a number of years both by converting existing Sessional Lecturers to Lecturers, and by hiring new Lecturers and assigning them courses that would otherwise be taught by Sessionals. This is reflected in the decrease in percentage of bargaining unit salaries paid to Sessionals and the

large increase in the total number of Lecturers added to the bargaining unit that have been observed in the past few years.

9.5.6 The fact that more work currently being done by Sessionals has not been "bundled" into Lecturer appointments is testament to the fact that much of the work currently being done by Sessionals cannot sensibly be bundled into Lecturer positions. If it could, the University would already have done so. In reality a great deal of existing Sessional work will remain not bundled into Lecturer positions and the University proposes to create two new classifications to do that work: Contingent Faculty and Graduate Student Lecturers. The former would have no rights to future work and the latter would be restricted to a maximum of 9 credits per year, and have no rights to future work. In other words the primary purpose of this proposal is not to bundle work into Lecturer appointments, which the University could do now, but to eliminate all rights to work currently held by Sessionals.

9.5.7 The Association notes that currently graduate students do teach courses as members of the bargaining unit – as Sessionals. UBC Board of Governors Policy #75 states:

> 2.4.1 If a doctoral student has been admitted to candidacy, he or she may be granted a part-time appointment as a **sessional lecturer** to teach up to nine credits of course work per Academic Year, with no more than six credits of course work per term.
>
> 2.4.2 Doctoral students not yet admitted to candidacy: In general, a doctoral student not yet admitted to candidacy may only be granted an appointment to teach a course in which a Board Appointment is required in special circumstances. Such an appointment will be a part-time appointment as a **sessional lecturer** and will be limited to a maximum of three credits of course work per term, up to a maximum of nine credits of course work per Academic Year. In cases where a doctoral student not yet admitted to candidacy holds suitable credentials independent of those being acquired through pursuit of his/her degree program, he or she may be appointed to teach up to six credits of course work per term, up to a maximum of nine credits of course work per Academic Year. In either case, prior written approval is required from the doctoral student's department graduate research supervisor and graduate advisor or department head.
>
> (emphasis added)

9.5.8 The University's proposal is simply a proposal to take work currently being performed by employees in the Sessional Lecturer classification, rename the classification and remove all rights to future work currently enjoyed by Sessionals. In the process individual employees now employed as Sessionals will either lose their jobs or keep their jobs, but with reduced job security.

9.5.9 The second aspect of the University's proposal is an attack on the salaries of contract academic staff. Currently Sessionals are paid per course credit taught, subject to a minimum salary scale. The Association has a strong objection the multiple scales currently in use and proposes a single scale. But single or multiple scales, Sessionals are paid by the course. Currently Lecturers have no per-course minimum salary, no maximum teaching load, and no minimum annual salary. What prevents Lecturers from being paid less than Sessionals per course is the existence of the Sessional salary scales, which act as an effective lower bound on the per-course salaries of Lecturers.

9.5.10 The University has made the following two proposals concerning salaries of Lecturers and the newly renamed Sessionals:

> 4.01 The minimum salary for Contingent Faculty and Graduate Student Lecturers shall be $50,450 for a full time workload as defined by the unit workload allocation under Article 13, Part 1.
>
> 4.02 The minimum salary for Lecturers shall be $59,350 for a full time workload as defined by the unit workload allocation under Article 13, Part 1.

9.5.11 The current full-time definition for the vast majority of Sessionals is 9 credits per term. There are three terms per year, so a full-time full-year Sessional would teach 27 credits per year in Arts and other Faculties with a 9 credit full-time definition. At $50,450 per year that works out to $1,868.52 per credit, well below the current Arts minimum. Put another way, the minimum salary for a 4-month full-time appointment as a Sessional in Arts, teaching 9 credits (3 courses), is between $18,792 and $20,385, depending on their step. A four-month contract for a full-time "Contingent Faculty" member would be one-third of $50,450, or $16,817. The represents a massive reduction in pay for those Sessionals. Further there is no reason that the definition of full-time could not be increased in the future, not on a Faculty by Faculty basis, but in an individual department. This proposal is an attempt to vastly lower the per course salary of Sessional employees by reclassifying them as Lecturers.

9.5.12 The current *de facto* maximum teaching load for full-time full-year Lecturers is 8 courses (24 credits) per year. At the proposed annual salary of $59,350 (effectively the current *de facto* minimum) this works out to a minimum per credit salary of $2,473, 3% higher than the top of the Arts Sessional scale once vacation pay is taken into account. If the current *de facto* minimum salary and maximum course load were embedded in the Collective Agreement as the Association proposes, this proposal would have a very minor effect on the minimum per-credit cost of courses taught by Lecturers. However, the University does not propose to embed the current practice in the Collective agreement but to allow the maximum teaching loads to be set on a department by department basis, leading to the potential for significant reductions in the per credit salaries, not just below the current Lecturer minima but the current Sessional minima as well. The university recognizes this in the proposed transitional at Paragraph 6.

9.5.13 The University is allowing existing Sessionals who apply for and are granted Lecturer positions to keep their current per-credit salaries, secure in the knowledge that the existing Sessionals can easily be gotten rid of and replaced by new employees for whom this protection does not exist.

9.5.14 The Association views its zero-cost proposal on Sessional right of accrual as minimally intrusive and consistent with practices elsewhere. The Association views its zero-cost proposal on right of reappointment for Lecturers as similarly minimally intrusive and consistent with practices elsewhere and notes that the University has no objection to this in principle, as it has made a similar proposal. The University has made a complex proposal, involving massive concessions, not with any expectation that it will be awarded (indeed they have asked that it not be awarded) but as a tactic to prevent the Board from seriously considering the Association's proposals.

10. Conclusions

*10.1 **Monetary issues***

10.1.1 The Association submits, based on the evidence provided by Ms. Joy, in both her Expert Report and her Reply Report, that the University does have an ability to pay the costs of its GWI proposal, under Article 11.2 of the *Framework Agreement,* which states "the University's need to preserve a **reasonable balance** between the salary of members of the bargaining unit and other expenditures."

10.1.2 The Association has further provided a clear analysis of the criteria set out in Article 11.2(e)i-iv, to show there is compelling evidence to award the benefit proposals put forward by the Association. The Association has shown a demonstrated need for the benefits proposed. Moreover, the cost of these proposals is not great.

*10.2 **Non-monetary issues***

10.2.1 In considering our non-monetary proposals, we ask that the Arbitration Board consider the fundamental insight revealed in the ***Saskatchewan Federation of Labour v Saskatchewan***, (***SFL***) (**supra**) decision discussed in paragraphs 8.2.6 to 8.2.10. This decision broadened the constitutional protection for workers' rights under section 2(d) of the Charter. The Association has no right to strike, and if the University can count on successive Arbitration Boards to avoid adjudicating language, then the University will never have an incentive to negotiate the issues that are of fundamental importance to the Association. Instead, there will always be impasse, as is obvious from the workload proposal. This creates a fundamental imbalance of power between the Parties, something that **SFL** effectively addresses.

10.2.2 The Collective Agreement provides guidance in this matter in that it establishes the need to consider Canadian universities of comparable academic quality and size as an important determinant in making an award. The Faculty Association has, where appropriate, used these comparators to show how the language we've proposed is already in place at a number of the universities that are our major competitors.

10.2.3 The University has mischaracterized our non-monetary proposals as "significant breakthroughs." That is simply incorrect. The Faculty Association's proposals are eminently reasonable, incremental, and backed up with strong evidentiary support. After months of negotiations the Faculty Association's proposals have been winnowed down to a small set that represents its highest priority items, and shown the demonstrated need to achieve them. We believe the Arbitration Board can and should adjudicate all of these issues with the evidence at hand. Our non-monetary proposals either mirror language in the agreements of our major comparators, seek internal equity and parity for members of our bargaining unit, or support basic labour principles.

*10.3 **Comparability***

10.4.1 The Association is seeking tiny gains through its Workload proposal (Association's August 31, 2015 Submission, pages 70-73) to bring the language closer to the language of the University of Toronto, Canada's top research-intensive university and our closest comparator. It has whittled its proposal to the bare bones. Many of our other comparator

institutions have workload language similar to what we seek (see **Tab 13b** in the Association's Book of Evidence, August 31, 2015) so our proposal is not novel.

10.4.2 The Association proposes to eliminate the term-certain date when Career Advancement Plan increments are paid out and replace it with an annual date. This is standard at all of the comparator institutions for which data are available, and all universities in BC (Association's August 31, 2015 Submission, page 63-64 and **Tab 9**, Association's Book of Evidence, August 31, 2015).

*10.4 **Internal Equity and Parity Proposals***

10.4.1 Our proposal on reappointment rights for Lecturers is designed to seek equity and parity between members of the bargaining unit. It is unreasonable to have members of the same bargaining unit treated inequitably.

*10.5 **Basic Labour Principles***

10.5.1 We are also seeking some basic rights for members, language that is standard in many unionized workplaces. The Association is seeking the Right of First Refusal for Sessionals to allow this group of employees to compete for work for which they are qualified and to have priority over external candidates for Lecturer positions that become available (Association's August 31, 2015 Submission, pages 66-68). We view these as basic workplace rights, allowing current employees to have access to work as it becomes available before hiring new employees.

*10.6 **Other issues***

10.6.1 The University has made no objections to our proposal that in the event that a member passes away while their dependent child is enrolled in UBC, the child will continue to be eligible up to the maximum tuition waiver credits (Association's August 31, 2015 Submission, page 51).

ALL OF WHICH IS RESPECTFULLY SUBMITTED ON BEHALF OF THE UNIVERSITY OF BRITISH COLUMBIA FACULTY ASSOCIATION.

Dated at Vancouver, BC, October 7, 2015

_____

Allan E. Black, Q.C.

Counsel for the University of British Columbia Faculty Association